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CATECHISM
OF THE
LAW GOVERNING THE PROCEDURE
OF THE
East India Company's Civil Court
IN THE
PRESIDENCY OF FORT ST GEORGE,
IN ORIGINAL SUITS.

BY
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A DISTRICT MOONSIFF OF THAT PRESIDENCY.

MADRAS:
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1857.

TO

GEORGE ANSTRUTHER HARRIS, ESQ.,

CIVIL AND SESSIONS JUDGE OF CHITTOOR,

THIS VOLUME

WITH PERMISSION,

•

RESPECTFULLY DEDICATED

HIS MOST OBEDIENT SERVANT,

SAMUEL R. DAWES.

PREFACE.

THE Laws relating to the procedure of the Mofussil Courts are themselves so varied, and are scattered over so many volumes, that every one who has attempted the study of them must have felt the want of suitable elementary works treating of this important subject. Perhaps at no period has this want been more felt than at the present time. The Rules promulgated by the Court of Sudr Udalut for the periodical examination of Candidates for the Offices of Pleader and District Moon-siff have given an almost incredible impetus to the study of Law, but at the same time there exist no adequate text books to assist the Candidate in preparing for examination. My present endeavors have been directed with an immediate reference to the wants of such parties. The Questions and Answers describe the procedure to be followed, from the institution of a suit to the final execution of the judgment, as prescribed in the Regulations, Acts, and Circular Orders. The leading features of the Law of Evidence and the principles of the Statute of Limitation, taken from Standard Authorities, are also succinctly stated.

•

However I may have succeeded in my task, I can only say that I should have been most glad to have met with a work like the present, when I first entered upon the study of the Madras Law ; and in issuing this Volume, I do so in the hope that future Students will find it an useful auxiliary in their pursuit.

EXPLANATION OF ABBREVIATIONS.

| | |
|------------------|--|
| Cl. | Clause. |
| Sec. | Section. |
| Reg. | Regulation. |
| C. O. | Circular Order of the Sudr Udalut. |
| C. O. F. U. | Circular Order of the Fouzdary Udalut. |
| R. P. S. U. | Rules of Procedure promulgated by the Sudr Udalut. |
| D. S. A. | Decree of the Sudr Udalut in Special Appeal. |
| S. U. Dy. | Diary of the Sudr Udalut. |
| S. U. Pro. | Proceedings of the Sudr Udalut. |
| Starkie, 4th Ed. | Starkie's Law of Evidence ; 4th Edition. |
| Best, 2nd Ed. | Best's Law of Evidence ; 2nd Edition. |
| M. C. P. 2nd Ed. | Macpherson's Civil Procedure ; 2nd Edition. |

PART I.

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REGULAR SUITS.

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## REGULAR SUITS.

*Question 1.*—What is the object of the establishment of the Civil Courts?

Civil Courts  
why established.

*Answer.*—The Civil Courts were established in order that, by the exercise of the judicial power vested in them, rights may be enforced and injuries redressed.(a)

*Q. 2.*—What is a Civil Suit?

Civil suit, what  
is.

*A.*—A Civil Suit is an application to a Court of Civil Jurisdiction for the enforcement of some right, or for the redress of some wrong, in respect of which the party applying cannot obtain his rights without the intervention of the Court.(b)

*Q. 3.*—What description of suits are the Courts exercising civil jurisdiction competent to entertain?

Jurisdiction of  
Courts.

*A.*—They are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land rents, revenues, debts, accounts, contracts, partnership, marriage, caste, claims to damages for injuries, and generally of all suits and complaints of a civil nature.(c)

*Q. 4.*—State the value of original regular suits cognizable by the Zillah Courts?

*A.*—The Zillah Courts can entertain all regular suits for 10,000 Rupees and upwards,(d) provided the landed or other real pro-

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(a) M. C. P. 2 Ed. 26.

(b) Ibid. 1.

(c) Sec. 5, Reg. II, 1802.

(d) Sec. 3, Act VII, 1843.

perty to which the suit may relate be situated, or in all other cases, the cause of action arose, or the Defendant, at the time the suit commenced, resided as a fixed inhabitant, within the limits of their local jurisdiction.(e) In all cases the cause of action must have arisen within 12 years preceding the institution of any suit on account of it.(f)

Q. 5.—State the value of original regular suits cognizable by the Subordinate Zillah Courts ?

A.—Subject to the same restrictions as the higher Court, the Subordinate Zillah Courts can receive all regular suits for any amount or value less than 10,000 Rupees.(g)

Q. 6.—State the value of regular suits cognizable by District Moonsiffs ?

A.—District Moonsiffs have cognizance of suits for Lakharaj and Malgoozary lands of an annual produce not exceeding 100 and 1000 Rupces respectively, and for other property, real or personal, of a value not exceeding the latter amount; provided, in every case, the cause of action arose within 12 years preceding institution,(h) and that it so arose, or the Defendant at the commencement of the suit resided as a fixed inhabitant, within the local limits of the Moonsiff's jurisdiction. Where an action may be brought, against several Defendants, it will be sufficient (to make the case cognizable) that one of them resided as a fixed inhabitant within such local limits.(i)

Jurisdiction  
when barred.

Q. 7.—In what cases is the jurisdiction of the Courts barred ?

A.—Suits in which the cause of action arose 12 years previously to the institution of any suit on account of it ; (j)

those for the grants, offices and allowances referred to in Regulations IV and VI, of 1831, and Act VI of 1849 ;

those against persons amenable to the Native Articles of War, unless for an amount exceeding 200 Rupees ;(k)

those for real property situated within the E. I. Company's

(e) Sec. 5, Reg. II, 1802.

(f) Cl. 4, Sec. 18, Ibid.

(g) Sec. 4, Act VII, 1843.

(h) Sec. 11, Reg. VI, 1816.

Sec. 5, Reg. III, 1833.

(i) Sec. 2, Act XIX, 1855.

(j) Cl. 4, Sec. 18, Reg. II, 1802.

(k) Sec. 2, Act XI, 1841.

A  
CATECHISM  
OF THE  
MOFUSSIL CIVIL LAW  
OF THE  
MADRAS PRESIDENCY.

*Question.* 1.—What is the object of the establishment of the Civil Courts?

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*Q.* 4.—State the value of original regular suits cognizable by the Zillah Courts?

---

(a) M. C. P. 2 Ed. 26.

(c) Sec. 5, Reg. II, 1802.

(b) Ibid. 1.

*A.*—The Zillah Courts can entertain all regular suits for 10,000 Rupees and upwards, (*d*) provided the landed or other real property to which the suit may relate be situated, or in all other cases, the cause of action arose, or the Defendant, at the time the suit commenced, resided as a fixed inhabitant, within the limits of their local jurisdiction. (*e*) In all cases the cause of action must have arisen within 12 years preceding the institution of any suit on account of it. (*f*)

*Q. 5.*—State the value of original regular suits cognizable by the Subordinate Zillah Courts ?

*A.*—Subject to the same restrictions as the higher Court, the Subordinate Zillah Courts can receive all regular suits for any amount or value less than 10,000 Rupees. (*g*)

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those of real property situated within the E. I. Company's

(*d*) Sec. 3, Act VII, 1843.

(*e*) Sec. 5, Reg. II, 1803.

(*f*) Cl. 4, Sec. 18, Ibid.

(*g*) Sec. 4, Act VII, 1843.

(*h*) Sec. 11, Reg. VI, 1816.

Sec. 5, Reg. III, 1823.

(*i*) Sec. 2, Act XIX, 1855.

(*j*) Cl. 4, Sec. 18, Reg. II, 1802.

(*k*) Sec. 2, Act XI, 1841.

Territories, if the cause of action arose previously to the acquisition of the Territory by the Company ;(*l*)

those relating to real property situated within the limits of the Supreme Court, or against residents of Madras ;(*m*)

those for the discharge of the private debts of Native Princes, Zemindars or other independent land-holders who were not, at the time of entering into such engagements, amenable to a Court of Justice or some public authority for their discharge ;(*n*) and

those connected with Wagers,(*o*) are beyond the cognizance of the Courts.

They also cannot entertain a cause previously heard and determined by a competent authority ;(*p*) nor if a suit has been instituted in one Court can another Court receive a suit for the same cause of action.(*q*)

Q. 8.—What suits are District Moonsiffs *specially* prohibited from trying ?

A.—Suits in which they themselves, their relatives or dependents may be concerned ;(*r*) also those instituted in *formá pauperis*,(*s*) unless referred to them by the Zillah Judge.(*t*)

Q. 9.—What are the main points a Court should look to in order to determine that it has jurisdiction of a suit ?

how to be determined.

A.—The amount ; the residence of the Defendants ; the situation of the property in issue ; and when, and where the cause of action arose.

Q. 10.—What are the parties in a suit, and their mutual altercations, designated ?

Parties.  
Pleadings.

A.—The parties are called the Plaintiff and Defendant respectively ; the former being the party suing, and the latter the party sued. Their altercations are denominated Pleadings.

Q. 11.—What Pleadings are allowed in the Mofussil Courts ?

A.—In Courts of a higher jurisdiction than a District Moonsiff's, the Plaint ; Answer ; Reply and Rejoinder are allowed.(*u*) District Moonsiffs can only receive the Plaint and An-

(*l*) Cl. 1 and 2, Sec. 13, Reg. II, 1802.

(*m*) Sec. 12, Ibid.

(*n*) Sec. 8, Ibid.

(*o*) Sec. 1, Act XXI, 1848.

(*p*) Sec. 10, Reg. II, 1802.

(*q*) Sec. 9, Ibid.

(*r*) Cl. 2, Sec. 12, Reg. VI, 1816.

(*s*) Cl. 3, Ibid.

(*t*) Cl. 2, Sec. 8, Reg. IV, 1825.

(*u*) Sec. 3, Reg. III, 1802.

swer.(v) But in all the Courts a Supplemental Pleading, is admissible, under clause 8, Section 7, Regulation XV. of 1816, and C. O. 7th November 1809.

PLAINT.

Q. 12.—What is the first step a party should take to institute a suit ?

A.—He should present a Petition of complaint to the Court within whose cognizance the suit falls, praying its decree touching some right claimed by him and withheld or usurped by the person against whom the complaint is made.

Q. 13.—By whom must be the Petition of complaint be filed ?

A.—By the party complaining, or by a Vakeel duly empowered by him, being an authorized Pleader of the Court.(w)

Q. 14.—What particulars should be stated in the Petition of complaint ?

A. The Complaint should state the name and residence of the party complained against, the value of the thing sued for, the precise matters of complaint, and the time when the cause of action arose.(x) If land be the object of the suit, its position, boundaries, extent, value of estimated annual produce and nature of tenure should be also specified.(y) All irrelevant or scandalous matter, abuse of the opposite party, or groundless imputations on any Court of Justice or Public Officer should be strictly excluded.(z)

Stamp.

Q. 15.—On paper of what stamp value must the Complaint be engrossed ?

A. The Complaint in a suit not exceeding in value Rupees 16 should be engrossed on stamped paper of the value of 1 Rupee ;

| In suits exceeding 16 and not exceeding |      | 32 Rs. | 2 Rs.        |
|-----------------------------------------|------|--------|--------------|
| do.                                     | 32   | do.    | 64 „ 4 „     |
| do.                                     | 64   | do.    | 150 „ 8 „    |
| do.                                     | 150  | do.    | 300 „ 16 „   |
| do.                                     | 300  | do.    | 800 „ 32 „   |
| do.                                     | 800  | do.    | 1600 „ 50 „  |
| do.                                     | 1600 | do.    | 3000 „ 100 „ |
| do.                                     | 3000 | do.    | 5000 „ 150 „ |

(v) Sec. 24, Reg. VI, 1816.

(y) C. O. 24th Augt. 1840. No. 66.

(w) Sec. 2, Reg. III, 1802.

(z) Cl. 1, Sec. 9, Reg. XIV. 1816.

(x) Sec. 3, Ibid.

| In suits exceeding 5000 and not exceeding 10000 |        | Rs. | 250    | Rs.      |
|-------------------------------------------------|--------|-----|--------|----------|
| do.                                             | 10000  | do. | 15000  | „ 350 „  |
| do.                                             | 15000  | do. | 25000  | „ 500 „  |
| do.                                             | 25000  | do. | 50000  | „ 750 „  |
| do.                                             | 50000  | do. | 100000 | „ 1000 „ |
| do.                                             | 100000 |     |        | 2000 „   |

Q. 16.—How are suits for Malgoozary and Lakharaj lands to be valued? <sup>(a)</sup> Valuation of suit.

A.—The value of suits for Malgoozary land is to be assumed at the amount of the annual produce (b); and for Lakharaj lands, at ten times the amount of the annual produce.(c)

Q. 17.—What is meant by the annual produce of Malgoozary and Lakharaj lands, in reference to which, suits for those lands are to be valued?

A.—It means the aggregate of the sums that may have been paid under the Regulations by the dependent talookdars, under farmers and ryots, on account of the year in which the claim may be preferred, and that would be payable by them, were the claimant to be put into possession of the land during that year.(d)

Q. 18.—How are suits for houses, gardens, tanks or other property, excepting Malgoozary or Lakharaj land, and suits for damages, to be valued?

A.—According to the nearest sum of money or amount in which the Plaintiff may be endamaged.(e)

Q. 19.—What should be done with the Plaint immediately on presentation?

A.—The Judge should sign, number and date it. The number of the suit, the names of the parties, the date on which the Plaint was received, the amount claimed and the subject-matter of the suit should then be entered in a Register to be kept for the purpose.(f)

Q. 20.—What measures should the Court take to apprise the Defendant of the suit filed against him? Notice to Defendant.

(a) Sec. 13, Reg. XIII, 1816.

(b) Cl. 1, Sec. 14, Ibid.

(c) Cl. 2, Ibid.

(d) Sec. 3, Reg. III, 1802.

(e) Ibid.

Cl. 3, Sec. 14, Reg. XIII, 1816.

(f) Sec. 3, Reg. III, 1802.

Sec. 18, Reg. VI, 1816.



*A.*—When the suit has been numbered and registered, a Notice should issue to the Defendant containing a short statement of the demand and specifying a day, not exceeding 20 days from date of Notice, on or before which, he should, either in person or by Vakeel, deliver his Answer to the Plaintiff. (*g*) The Law provides for the delivery to the Plaintiff, of the Notice to be served on the Defendant, (*k*) but the practice is to employ Batta Peons in executing this process. The Peon serving the Notice should obtain from the Defendant a written acknowledgment of its having been served on him, endorsed on the back of the Notice, and witnessed by some of the Defendant's neighbours or other inhabitants. (*i*)

*Q. 21.*—In what case may the Notice to the Defendant be tendered to his Agent?

*A.*—If the Agent be expressly empowered by Mooktyarnamah to receive on behalf of the Defendant any judicial process not specially ordered to be served on the Defendant personally, the Notice may be tendered to the Agent for communication to his Principal, and the Agent's acknowledgment endorsed on the Notice, will be sufficient proof of service. (*f*)

*Q. 22.*—Should the Defendant's Agent decline to receive the Notice, how should it be served?

*A.*—It should be served on the Defendant, and his acknowledgment obtained. (*k*)

*Q. 23.*—How should the Notice be served, if the Defendant be a resident of a different Zillah?

*A.*—The Notice should be transmitted to the Judge of such Zillah for service in the usual way. (*l*)

*Q. 24.*—If the Defendant be resident beyond the jurisdiction of the Courts and the suit be cognizable by the Court in which it has been instituted, how ought the Notice be served?

*A.*—Where the suit is for land or other immovable property, the notice is to be served upon the Defendant's Agent

(*g*) Cl. 1, Sec. 2, Reg. II, 1811.

Cl. 1, Sec. 19, Reg. VI, 1816.

Cl. 5, R. F. S. U.

(*k*) Cl. 2, Sec. 19, Reg. VI, 1816.

C. O. 8th Feb. 1855. No. 134, H.

(*h*) Cl. 3, Sec. 19, Reg. VI, 1816.

(*i*) Cl. 2, Sec. 2, Reg. II, 1811.

(*j*) Cl. 3, Ibid.

(*l*) Cl. 3, Ibid.

# PROCLAMATION. SECURITY.

or representative in charge of the property; and in other cases the circumstances thereof should determine the mode in which notice of the claim should be conveyed to the Defendant.(m)

Q. 25.—What course should be followed in case the Defendant evades service of the Notice, or cannot be found, or refuses to give the required written acknowledgment?

Proclamation.

A. On receiving a Return to this effect from the Peon entrusted with the service of the Notice, the Court should issue a proclamation containing a copy of the original Notice, and notifying that if the Defendant fail to appear within a fixed period (not being less than 15 days), the suit will be tried *ex parte*.(n) The Proclamation should be affixed in the Court-house and a copy on the outer door of the Defendant's usual place of residence, or some conspicuous place near it. Should the Defendant appear within the period fixed in the Proclamation, he should be allowed a copy of the Plaintiff and to file his Answer.(o)

Q. 26. How ought the Court to proceed if the Defendant fail to conform to the Notice duly served or to the Proclamation consequent on the non-service of the Notice?.

Trial *ex parte*.

A. The Court should proceed to trial *ex parte*.(p)

Q. 27.—When is Hazirzamin security to be required from the Defendant, and what is the penalty if it be not given?

Hazirzamin.

A. If the Court be satisfied by sufficient proof that the Defendant intends to abscond and to withdraw himself from its jurisdiction, it may, either on the institution of the suit or at any time whilst it is depending, issue a summons upon the Defendant containing a short account of the demand, and requiring him to give security for his appearance. In the event of the security not being given, the Defendant should be committed to close custody until he gives the security, or performs the Decree in the suit or until an attachment of property is made to secure the execution of the Decree.(q)

Q. 28.—What discretion is allowed the Courts in fixing

(m) Cl. 3, Sec. 2, Reg. II, 1811.

(n) Sec. 3, Ibid.

Cl. 2, Sec. 21, Reg. VI, 1816.

(o) Sec. 23, Ibid.

(p) Sec. 3, Reg. II, 1811.

Sec. 20 and 21, Reg. VI, 1816.

(q) Sec. 5, Reg. III, 1802.

Cl. 1, Sec. 4, Reg. II, 1811.

Sec. 3, Act XIX, 1855.

the extent of the Hazirzaminy security to be given by the Defendant ?

*A.*—In the first instance, such security only may be demanded as may seem necessary to secure the appearance of the Defendant during the trial of the suit. But if the security taken, subsequently appear insufficient, the Court may take such further security as it may think necessary to insure the Defendant's appearance.(r)

*Q. 29.*—What remedy is provided by the Law, if a Defendant, after giving Hazirzaminy security, do not appear, or having appeared refuse to answer ?

*A.*—The Plaintiff may sue the sureties on their engagement, and recover from them whatever is found due to him from the Defendant ; or the suit against the Defendant may be proceeded with *ex parte*.(s)

Malzamiu.

*Q. 30.*—When is Malzamiu security demandable from a Defendant ?

*A.*—If the Court be satisfied by sufficient proof that the Defendant means to dispose of the property in his possession by any private transfer, or to cause the public sale of any disputed land by withholding the assessment upon it, or to remove any personal property from the jurisdiction of the Court whilst the suit against him is depending, for the purpose of avoiding the execution of an eventual judgment against him ; it is competent to the Judge to call upon the Defendant for security in such sum as may appear sufficient to make good the ultimate judgment of the Court.(t)

*Q. 31.*—What course should be followed, if a Defendant fail to give Malzamiu security ?

*A.*—If the security be not given, the Court may cause the attachment of any lands or other property possessed by the Defendant, to the amount or value of the suit, or the attachment of which may be deemed necessary to secure the execution of the Decree in the cause.(u)

*Q. 32.*—How is the attachment of property in default of Malzamiu security being given, to be made, and what is the effect of such attachment ?

(r) Cl. 2, Sec. 4, Reg. II, 1811.

Sec. 22, Reg. VI, 1816.

(s) Sec. 14, Reg. III, 1802.

(u) Ibid.

(t) Cl. 1, Sec. 5, Reg. II, 1811.

*A.*—The attachment should be made by a written order of the Court, read and proclaimed upon the spot where the property is situated and affixed there in some conspicuous situation. Any subsequent private alienation of the property, during the continuance of the attachment, is illegal and void, and any removal of the property attached, with a view to oppose or evade the sequestration, is punishable as an act of resistance to the process of the Court. The attachment will not in general oust the Defendant from possession, nor will it preclude any act of his, or of his representative, relative to the property, consistent with the object of the attachment.(v)

*Q.* 33.—In what cases should the attachment of property, in default of Malzamiy security being given, be made through the Collector of the District?

*A.*—In cases where the suit may be for landed property of considerable value, and wherein it may appear necessary to divest the Defendant of the management of the land until the suit be decided, or security be given, or if there exist any other special cause, the attachment should be made through the Collector.(w)

*Q.* 34.—Under what circumstances is the attachment to be taken off before decision of the cause?

*A.*—If the required Malzamiy security be given by the Defendant the attachment should be removed.(x)

*Q.* 35.—What measures should the Court adopt to obtain an answer from the Defendant who is a Hindoo or Mahomedan woman of rank, and cannot, according to the custom of the country, appear in a Court of Justice?

Notice to female Defendant.

*A.*—The Court should not issue any compulsory process against her, but should issue a summons requiring her to appear in person or by Vakeel on a certain specified date, and to answer to the complaint, and to abide by the orders which the Court may pass. The summons is to be directed to the Nazir of the Court, and to contain a short account of the nature of the demand, with a notice that, if the Defendant do not appear at the time specified in the summons, or, having so appeared, do not answer the complaint, or if she make any other default, the Court will proceed to try and determine the cause *ex parte*. The

(v) Cl. 2, Sec. 5, Reg. II, 1811.

(x) Sec. 6, Reg. II, 1811.

(w) Ibid.

summons is further to command the Nazir to deliver a copy of it to the Dewan or some principal servant of the Defendant.(g)

Q. 36.—What procedure should be observed if the principal servant of a female Defendant evade service of the summons, or cannot be found, and if the Defendant fail to answer in person or by Vakeel?

A.—Upon proof, on solemn affirmation, of the impossibility of serving the summons on the servant, the Court should issue a Proclamation, as in the case of a Defendant who cannot be found, or who acts in such a manner as to evade service of the notice requiring him to answer. If the female Defendant fail to appear and answer, the Court should proceed to trial *ex parte*.(s)

Notice to Defendant in Madras.

Q. 37.—How is service of the Notice to be effected on Defendants resident within the jurisdiction of the Supreme Court?

A.—Through the Sheriff of Madras, in the mode prescribed by Act XXI of 1840.

ANSWER.

Q. 38.—What should the Answer contain?

A.—The Defendant should briefly state in it the facts on his side opposed to the truth of the demand, with particulars of time, place, &c.; but he should not describe the evidence on which he rests for proof of his assertions, nor enter into any argument. In fact the Answer should be drawn up in the same succinct manner as the Plaint, and confined to the immediate subject matter of the suit.(a)

Q. 39.—What pleas should be set forth prominently at the outset of the Answer, and with what object?

A.—All dilatory or abating pleas, *e. g.*, that the value of the property in issue is understated, that the Plaintiff is under personal disability to sue, that the suit has not been laid against the right parties, or against all who should have been included therein, that the subject matter thereof has already been adjudicated on, that the suit is barred by the statute of limitation, or that in any way it cannot be proceeded with. These pleas should be briefly stated, at the outset of the Answer, with the necessary particulars of sums, persons, dates, &c. in order that the suit in respect to them may be brought to a speedy issue.(b)

(g) Sec. 15, Reg. III, 1802.

(s) Ibid.

(a) Sec. 24, Reg. VI, 1816.

Cl. 9 and 12, R. P. S. U.

(b) Cl. 10, Ibid.

Q. 40.—What is the latest period at which the Defendant may answer?

A.—Although *ex parte* may have been declared, an Answer may be received any time *before* the Plaintiff files his list of witnesses; not afterwards.(c)

Q. 41.—When should the Reply be filed, and what should it contain? REPLY.

A.—The Reply should be put in on the next Court day after which the Answer may have been filed, and should contain nothing but a simple acknowledgment or denial of the facts set forth in the Answer.(d)

Q. 42.—When should the Rejoinder be put in, and what should it contain? REJOINDER.

A.—The Rejoinder should be put in on the day on which the Reply is filed, and should contain no more than a denial of the truth of the Reply, so far as this may be disputed.(e)

Q. 43.—On paper of what stamp value must the Answer, Reply and Rejoinder be written? Stamp.

A.—In the Court of a Sudr Ameen, on paper of the value of 4 Annas.

In a Subordinate Zillah Court, on paper of the value of one Rupee.

In the Zillah Courts and in the Sudr Udalt on paper of the value of 4 Rupees.

The Answer in suits before District Moonsiffs are not required to be on stamped paper.(f)

Q. 44.—If the subject-matter of a Plaint, Answer, Reply or Rejoinder cannot be written on a single sheet or roll of the prescribed stamped paper, what should be the value of the additional sheets required?

A.—The additional sheets should be of the value prescribed for the Answer, Reply or Rejoinder.(g) But when the first sheet

(c) C. O. 31st July 1855, No. 186 D.

(d) Sec. 5, Reg. III, 1802.

Cl. 13, R. P. S. U.

(e) Ibid.

(f) Sec. 19, Reg. XIII, 1816.

Sec. 39, Reg. VI, 1816.

(g) Cl. 2, Sec. 28, Reg. XIII, 1816.

of a Plaint before a District Moonsiff is of the prescribed value, the additional sheets may be unstamped.

Preparation of Pleadings.

Q. 45.—State the mode in which Pleadings are to be written out?

A.—They should be written in a fair, legible manner,<sup>(h)</sup> upon only one side of the sheet;<sup>(i)</sup>

If in the Malayalam or Canarese language, no more than 30 letters on an average (compound and double letters being counted as single letters) should be placed in one line;

If in the Tamil or Teleogoo language, no more than 8 words on an average should be written in each line.

Each sheet should contain not more than 30 lines.<sup>(j)</sup>

Every interpolation, erasure or correction should be placed between brackets, to which the initials of the Judge should be

Translated pleadings.

Q. 46.—Are English translations of Pleadings receivable by the

A.—Yes. The responsibility of acting thereon rests with the Judge accepting the translation, whose duty it is to ascertain that the translation is correct.<sup>(l)</sup>

Irregular pleadings.

Q. 47.—What is the penalty if Pleadings irregularly drawn up are presented?

A.—They should be returned, and amended Pleadings received. A Vakeel presenting such Pleadings is liable to censure, and if, notwithstanding censure, a repetition of such conduct occur, to fine and dismissal.<sup>(m)</sup>

Pleadings when completed.

Q. 48.—When are the Pleadings in a suit to be considered completed?

A. When the Plaint, Answer, Reply and Rejoinder have been filed; or whenever *ex parte* may have been declared and points recorded.<sup>(n)</sup>

Petitions inadmissible.

Q. 49.—Independently of the Pleadings, can the Courts receive petitions touching the merits of the suit?

(h) Cl. 1, Sec. 23, Reg. XXIII, 1816.

(i) C. O. 8th August, 1809.

(j) C. O. 15th Feb. 1886. No. 25.

(k) C. O. 20th Feb. 1850. No. 116, B.

(l) C. O. 18th Nov. 1844. No. 92, B.

(m) Cl. 3, Sec. 9, Reg. XIV, 1816.

Sec. 10, *Ibid.*

Cl. 16, R. P. S. U.

(n) Sec. 6, Reg. III, 1802.

C. O. 31st July 1855. No. 136, D.

A.—No. All applications relative to the conduct of the suit should be made orally and recorded in the Diary.(o)

Q. 50.—When is the Preliminary Hearing of a suit to take place, and what points are then to be considered?

PRELIMINARY  
HEARING.

A.—It should be held on a given day after the completion of the Pleadings. The Court should take into consideration any preliminary objections to the suit, such as, that the Plaintiff is under personal disability to sue, that the suit has not been laid against the right parties, or against all who should have been included therein, that the subject-matter thereof has already been adjudicated on, that the suit is barred by the statute of limitation, or that in any way it cannot be proceeded with. After holding such examination of these objections as may be necessary, the Court should dispose of the same, affording the Plaintiff the opportunity of remedying such defects as may be found to exist in his Plaint, or dismissing the suit according to the nature of the objections established, and this without entering upon the merits of the suit. Such dismissals are to be by summary order against which summary appeal will lie.(p)

Q. 51.—What is the prohibition contained in the Statute of Limitation?

STATUTE OF  
LIMITATION.

A.—The Statute of Limitation prohibits the Courts from hearing, trying and determining (with certain exceptions) the merits of any suit whatever against any person, if the cause of action arose twelve years before any suit was commenced on account of it.(q)

Q. 52.—What are the exceptions to the operation of the Statute of Limitation?

Exceptions.

A.—The exceptions are,

1st. Where the Plaintiff can prove that he had demanded the money or matter in dispute and that the Defendant had, within the 12 years preceding the institution of suit, admitted the truth of the demand, or promised to pay the money.

(o) Cl. 14, R. P. S. U.

(p) Sec. 5, Reg. II, 1802.

Sec. 9, 10, 11, 12, Ibid.

Sec. 18, Ibid.

Sec. 4, Reg. XII, 1809.

Sec. 11, 12, Reg. VI, 1816.

Sec. 5, Reg. XV, 1816.

Cl. 1, Sec. 2, Reg. IV, 1831.

Sec. 2, Reg. VI, 1831.

Cl. 1, Sec. 3, Ibid.

Act XXXV, 1836.

C. O. 1st June 1852. No. 126, A.

(q) Cl. 4, Sec. 18, Reg. II, 1802.



2nd. Where the Plaintiff can prove that he had preferred his claim within the above period to a competent Court or person having authority, (whether local or otherwise for the time being) and can assign satisfactory reasons for not having proceeded with such previous suit.

3rd. Where the Plaintiff can prove that either from minority, or other good and sufficient cause, he was precluded from previously obtaining redress.

4th. Where the claim may be founded on a bond in course of payment by instalments, or of which any proportion had been paid within the said period of 12 years.

5th. Where the claim may be on a mortgage, the period for rendering mortgages obsolete and unactionable being determinable by the Laws of the country.(r)

Application of  
statute.

Q. 53.—From what time must the period of limitation be generally calculated ?

A.—From the time a party may be in a situation to sue, or when the cause of action, as to him, originated.(s)

Q. 54.—When may the cause of action be said to arise in the case of a bond or other instrument for securing the payment of money ?

A.—From the time the money becomes payable.(t)

Q. 55.—From what time does the period of limitation begin to run in cases of Promissory notes payable at sight, and upon notes payable by instalments ?

A.—On notes payable at sight, from the day they are presented for payment ; and on notes payable by instalments, from the several dates the instalments fall due.(u)

Q. 56.—When a man is wrongfully ousted from the possession of that which he previously possessed, when does the cause of action arise ?

A.—From the moment the privation of right occurs.(v)

Q. 57.—When does the cause of action commence, where a man is wrongfully excluded from the enjoyment of that which he has not possessed ?

(r) Cl. 4, Sec. 18, Reg. II, 1802.

(t) M. C. P. 2d Ed. 75.

(s) M. C. P. 2d Ed. 71.

(u) Ibid 76.

S. U. Pro. 5th April 1820.

(v) Ibid 71.

*A.*—From the time when he first becomes entitled to demand such enjoyment: the possession of any other person is an usurpation of his right, and an exclusion of him.(w)

*Q. 58.*—In cases where property is wrongfully attached and sold in execution of a Decree, does the period of limitation begin to run from the sale, or from the attachment?

*A.*—From the sale; not from the attachment: for the attachment does not change the possession, though it imposes a clog upon it.(x)

*Q. 59.*—Where a right accrues to a Minor to succeed to property, when does the period of limitation begin to count?

*A.*—From the time he attains his majority. The period of minority is always deducted in favour of a Plaintiff.(y)

*Q. 60.*—For what period does the admission of a claim keep it alive?

*A.*—Every admission of a claim keeps it alive for the period laid down in the statute, viz., 12 years.(z)

*Q. 61.*—Is an acknowledgment of a debt sufficient to constitute a new ground of action so as to justify the institution of a suit notwithstanding that 12 years elapsed since the time of the original cause of action?

*A.*—Yes. An acknowledgment constitutes a fresh ground of action, and the claim will not be rendered unactionable unless 12 years elapsed from the date of such acknowledgment, without any renewal of admission or institution of a suit taking place.(a)

*Q. 62.*—Must the Court take notice of the circumstance of a suit being barred by the statute of limitation only on its being pleaded in bar of the claim?

*A.*—The Court should itself consider it, whether pleaded or

*Q. 63.*—How should the Court deal with a suit, the subject-matter of which may have been already adjudicated on by a competent Tribunal?

Suits decided  
by former Court.

(w) M. C. P. 2d Ed. 78.

(x) Ibid 72.

(y) Ibid 89.

S. U. Pro. 24th April 1823.

(z) D. S. A. 24 of 1851.

(a) Ibid.

(b) M. C. P. 2d Ed. 233.

C. O. 1st June 1852, No. 126.

*A.*—It should be dismissed. Should any doubt arise as to the competency of the former Tribunal or authority, the circumstances of the case should be reported to the Sudr Udalut, and their instructions awaited.(c)

**Undervaluation.**      *Q.* 64.—How should the Court proceed, if the Defendant in his Answer object that the suit has been undervalued so as to bring it within the jurisdiction of the Court?

*A.*—Before entering on the merits of the cause, the Court should make such enquiry as may appear necessary to ascertain whether the suit be, or be not, receivable by it; and if the Defendant's objection be established, he is entitled to an order of non-suit. No such objection can however be received from the Defendant unless made in his Answer to the Plaintiff.(d)

**Supplemental  
Plaint.**

*Q.* 65.—If a suit is found to be laid against the wrong parties, or not against all the parties who ought to be sued, or if the Defendant dies before the suit is brought on for hearing, how is the defect to be remedied?

*A.*—The Plaintiff may be allowed to file a supplemental Plaintiff, naming as Defendants, in the two former cases, the parties who ought properly to be sued, and in the last mentioned, the heirs of the deceased Defendant.(e)

**Misjoinder of  
claims.**

*Q.* 66.—What is a Misjoinder of claims, and how should a suit so characterized be disposed of?

*A.*—If the Plaintiff comprises several distinct and separate demands wholly dissimilar in their character, this is a Misjoinder of claims. The Court should not permit them to be litigated in one action, and should non-suit the Plaintiff.(f)

*Q.* 67. When may several separate claims be litigated in one suit?

*A.*—When by the course of transactions between the parties such claims become blended together, the whole may be comprised, and disposed of, in one suit.(g)

*Q.* 68.—What is the effect of an order of non-suit?

(c) Sec. 10, Reg. II, 1802.

(d) Cl. 1, Sec. 4, Reg. XII, 1802.

(e) Cl. 3, Sec. 7, Reg. XV, 1816.

C. O. 7th November 1809.

(f) M. C. P. 2d Ed. 106, 283.

S. U. Pro. 8th July 1830.

C. S. U. 9th May 1837.

(g) S. U. Pro. 8th July 1830.

S. S. U. 9th May 1837.

*A.*—An order of non-suit has the effect of charging the costs of all the proceedings upon the Plaintiff, but allows him free to sue again for the same matter.<sup>(k)</sup> Effect of non-suit.

Q. 69.—In what order should suits be taken up for trial; and what are the exceptions to the rule? Order of trial.

*A.*—The Courts should try the suits depending before them according to the order in which they are filed and numbered.<sup>(i)</sup> The exceptions to this rule are

Soldiers' suits;<sup>(j)</sup>

Suits involving disputes of a religious nature;<sup>(k)</sup>

Suits in which property may be attached to secure execution of the decree;<sup>(l)</sup>

Suits instituted by under farmers or ryots, under Regulation XXVIII of 1802.<sup>(m)</sup>

The Courts superior to a District Moonsiff's, possess a discretionary power to bring on any suit for trial before its turn whenever they may see special reasons for so doing, which reasons should always be recorded upon the record of the trial.<sup>(n)</sup> But District Moonsiffs cannot, unless with the sanction of the Zillah Judge, bring any particular suit to a hearing out of the regular order of the file. These restrictions do not of course apply to suits disposed of without an investigation.<sup>(o)</sup>

Q. 70.—When does the 1st Hearing on the Merits take place, and what is the procedure?

1ST HEARING  
ON MERITS.  
Points.

*A.*—After the disposal, at the Preliminary Hearing, of such objections to the suit as may have been raised, or otherwise may appear, the Court should affix a Notification in the Court-house giving the parties eight days' notice of the suit being taken up for hearing on its merits. On the occasion of this hearing, the Pleadings are to be read, and such explanation required from the parties as may be necessary to enable the Court to ascertain the precise points in dispute. Admissions made on either side are to be noted, and the Points in issue recorded, whether relating to matters of law or of fact, being first subjected to

(k) M. C. P. 2d Ed. 280.

(i) Sec. 20, Reg. III, 1802.

Sec. 25, Reg. VI, 1816.

(j) Cl. 1, Sec. 7, Reg. VIII, 1817.

(k) C. O. 21st Nov. 1837. No. 49.

(l) Sec. 6, Reg. II, 1811.

(m) Sec. 41, Reg. XXVIII, 1802.

(n) Sec. 20, Reg. III, 1802.

C. O. 4th April 1825.

(o) Ibid.

**Bills of Exchange,**

Letters of credit or other obligation for the payment of money,

**Receipts or Acquittances,**

Deeds of gift, sale or other transfer of property (excepting Wills,)

Leases, Deeds of mortgage or other limited assignment of land,

Deeds of contract, marriage settlement, partnership, agreement or security,(a) and

Puttahs and Caboolyats or other engagements between landlord and tenant, and Receipts or other acknowledgments for rent relating to Lakharaj lands.(b)

**Q. 82.**—On stamped paper of what value must Exhibits be written ?

**A.**—If the Bond or other instrument be for a sum of money, or value of property exceeding 64 Rupees and not exceeding 125 Rupees, the instrument should be on stamped paper of the value of 4 Annas.

|          |                       |         |           |
|----------|-----------------------|---------|-----------|
| If above | 125 and not exceeding | 250 Rs. | 8 As.     |
|          | 250                   | 500     | 1 R.      |
|          | 500                   | 1,000   | 2 Rs.     |
|          | 1,000                 | 2,000   | 4 "       |
|          | 2,000                 | 5,000   | 8 "       |
|          | 5,000                 | 10,000  | 16 "      |
|          | 10,000                | 20,000  | 32 "      |
|          | 20,000                | 50,000  | 50 "      |
|          | 50,000                | 100,000 | 100 "     |
|          | 100,000 Rs.           |         | 150 " (c) |

**Q. 83.**—What is the penalty if Exhibits which ought to be on stamped material are written on plain paper, or on insufficiently stamped paper.

**A.**—In either case, such an instrument cannot be filed by a Court unless the party presenting it pays a penalty equal to ten times the amount of the prescribed stamp duty.(d)

(a) Sec. 11, Reg. XIII, 1816.

Sec. 4, Reg. II, 1825.

(b) Cl. 1, Sec. 12, Reg. XIII, 1816.

(c) Sec. 11, Ibid.

Sec. 4, Reg. II, 1825.

(d) Cl. 1, Sec. 3, Ibid.

C. O, 17th January 1832.

Q. 84.—What Exhibits are not affected by the stamp laws?

A.—The following documents, when filed as Exhibits, may be on plain paper;

Puttahs and Caboolyats or other engagements between landlords and tenants, and Receipts or other acknowledgments for the payment of rent connected with Malgoozary lands,(e)

Engagements to sub-rent Abkary privileges and farms,

Receipts and acknowledgments between Abkary renters and Sub-renters.(f)

Mooktyarnamahs,

Arbitration Bonds ;(g) and all

Instruments and Wills executed for a sum of money, or value of property, not exceeding 64 Rs.(h)

Q. 85.—How are documents in the custody of a Collector or other Public Officer to be obtained for the purpose of evidence?

Public documents.

A.—By summoning such Officer to bring, or send by some proper person, the document required.(i)

Q. 86.—When are entries against interest and entries made in the course of business admissible in evidence in the *life time* of the person who made them?

Entries in course of business.

A.—When such person may be incapable of giving evidence by reason of loss of understanding subsequent to the entry, or may be at the time of the trial *bonâ fide*, and permanently, beyond the reach of the Court, or cannot be found.(j)

Q. 87.—When are entries in course of business admissible for the purpose of identification in the life time of the person who made them, or of him on whose information they were made?

A.—Entries made in Books proved to have been kept in the regular course of business or in any Public office, so far as such entries merely refer to, or tend to identify any Bank Notes or other Securities for the payment of money or other property, and the payer—in or receiver of them are admissible in evidence for the purpose of such identification, if they appear to

(e) Cl. 1, Sec. 12, Reg. XIII, 1816.

C. O. 24th January 1828.

(f) Cl. 2, Sec. 9, Reg. I. 1820.

(i) C. O. 17th June 1824.

(g) Cl. 2, Sec. 16, Reg. XIII, 1816.

(j) Sec. 39, Act II, 1855.

(h) Sec. 4, Reg. II, 1825.

have been made at, or about the time of the transactions to which they relate.(k)

Receipt.

Q. 88.—Is a Receipt admissible in evidence against any person other than the giver?

A.—Yes. On proof of its execution a Receipt is evidence not only against the giver, but also against any person in whose favor it would operate as a discharge, or to whom it would render the giver liable for the money, security or goods acknowledged to have been received.(l)

Q. 89.—Will a Receipt granted by an Agent or a Servant have the same effect as a Receipt by a Principal?

A.—Yes, if the authority to grant it be proved.(m)

Power of Attorney.

Q. 90.—In what case can a Power of Attorney be proved by the mere production of it?

A.—It can be so proved, if it had been executed more than a hundred miles from the place wherein the suit may be pending and purported on the face of it to have been executed before, and authenticated by a Notary Public or any Court, Judge, Consul or Magistrate.(n)

Despatch of letter.

Q. 91.—How is the despatch of a letter to be proved by a Letter book?

A.—The letter book must be produced and it must be proved that it was kept, that in the usual course of business letters were copied into it, and despatched, and that the letter was according to the usual practice despatched, to the best of the knowledge and belief of the witness having reasonable ground for forming that belief.(o)

Receipt of letter.

Q. 92.—What will constitute *prima facie* evidence of the receipt of a letter?

A.—An entry proved to have been made in the course of business in a book kept for marking the despatch and receipt of letters.(p)

An attested document.

Q. 93.—Can an attested document be proved as if unattested?

(k) Sec. 40, Act II, 1855.

(l) Sec. 41, *Ibid.*

(m) Sec. 42, *Ibid.*

(n) Sec. 48, *Ibid.*

(o) Sec. 50, *Ibid.*

(p) Sec. 51, *Ibid.*

*A.*—Yes; unless it be a document to the validity of which attestation is requisite.(g)

Q. 94.—To what extent will admission of execution constitute *prima facie* proof of an attested document?

Admission of execution.

*A.*—The admission of a party of its execution by himself is, as against him, sufficient *prima facie* proof of such execution, though it be an instrument required by law to be attested.(r)

Q. 95.—What proof is necessary to establish the correctness of a copy of a document made by a copying machine?

Copy from machine.

*A.*—None. Such a copy should be accepted, without further proof, to be a correct copy.(s)

Q. 96.—What documents are excluded from being filed in evidence on the ground of public policy?

State papers.

*A.*—Those relating to affairs of State.(t)

Q. 97.—What is the effect of registering a Deed?

Registry.

*A.*—A registered deed of sale, gift, or mortgage of real property, provided its authenticity be established, invalidates any other deed of sale, gift or mortgage respectively, of the same property, whether executed before or after the registered deed.(u)

Q. 98.—Is the registry, by the Collector, of land, in the name of a party sufficient to prove his right of property?

*A.*—No, it only sets him up as the ostensible proprietor for the time being.(v)

Q. 99.—Does non-registry take away a title to landed property?

*A.*—No.(w)

Q. 100.—Does a sale of land become invalid, as between the seller and buyer, because of want of registry?

*A.*—No.(x)

Q. 101.—If a deed or other private document be attested, how must it be proved, and how if unattested?

Proof of documents.

*A.*—If attested, the document must first be produced and

(g) Sec. 37, Act II, 1855.

(r) Sec. 38, Ibid.

(s) Sec. 35, Ibid.

(t) Sec. 21, Ibid.

(u) Sec. 2, Act XIX. 1848.

(v) C. O. 17th Sept. 1832.

(w) Ibid.

(x) Ibid.



then be proved by the attesting witnesses. If the witnesses be dead, insane, or cannot be found, proof may be given of their hand-writing. If the document be unattested, it must be produced and the hand-writing of the obligor be established by evidence. (y)

Q. 102.—What is considered to be the best evidence to the contents of a written instrument?

A.—The instrument itself. (z)

Secondary Evidence.

Q. 103.—What circumstances will justify the reception of secondary evidence to the contents of a document?

A.—It is receivable when the document is lost or destroyed, or is in the hands of the opposite party, or is legally unattainable. (a) But before secondary evidence can be received, the absence of the primary evidence (the document itself) must be satisfactorily accounted for. (b) Secondary evidence must moreover be legitimate evidence, inferior to the primary, solely in respect to its derivative character. Thus, the *copy of a copy* of a lost or destroyed document is inadmissible in evidence. (c)

Q. 104.—Are there any degrees of secondary evidence?

A.—No. When the absence of the original instrument has been satisfactorily explained, any form of secondary evidence is receivable; and, under this rule, even parol evidence to the contents of a document may be received, notwithstanding the existence of an attested copy or abstract of it. (d)

Corroborative evidence.

Q. 105.—What is admissible as corroborative written evidence?

A. Books proved to have been regularly kept in the course of business or in any public office, (e) also Certificates of shares and of registration thereof. Bills of lading, Invoices, Account sales, Receipts for the payment, deposit, or delivery of money, goods, securities or other things, provided they be proved to have been given in the ordinary course of business. (f)

(y) Starkie 4th Ed. 499.

Best 2nd Ed. 278.

(z) Starkie 4th Ed. 500.

(a) Best 2nd Ed. 556.

Sec. 36, Act II. 1855.

(b) Best 2nd Ed. 107.

(c) Ibid, 559.

(d) Starkie 4th Ed. 544.

Best 2nd Ed. 559.

(e) Sec. 43, Act II, 1855.

(f) Sec. 44, Ibid.

106.—When is a dying declaration admissible in evidence?

Dying declarations.

A. Whenever it may be proved that the deceased, at the time of making the declaration, was, and thought himself to be, in danger of approaching death.(g)

Q. 107. State the law in respect to the declarations of illegitimate members of a family, and of strangers?

Declaration of illegitimate persons.

A.—In cases of pedigree, the declarations of such persons are admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.(h)

Q. 108.—State the points of the law with regard to "Professional confidence"?

Professional communications.

A.—A Pleader cannot, without the consent of his client, divulge any communication, nor the contents of any document, of his client, the knowledge of which he acquired in the course of his professional employment. The privilege is that of the client; but should he offer himself as a witness in a suit, he forfeits this privilege, and the Pleader is bound upon examination to disclose any such matter as aforesaid which may be relevant to the suit.(i)

Q. 109.—What is the law in regard to the competency of a husband or wife to give evidence affecting each other?

Who may be witnesses.

A.—The one is competent to give evidence for or against the other in any civil proceeding. But a communication made by the one to the other during marriage is a privileged communication, and cannot be divulged without the consent of the person making it, unless it relates to a matter in dispute in a suit between the husband and wife.(j)

Q. 110.—Is a person disqualified from being a witness in a civil suit, because of conviction of an offence?

A.—No.(k)

Q. 111.—Is a person interested in the result of a suit, or related to any of the parties thereto, competent to give evidence in such suit?

(g) Sec. 29, Act II, 1855.

(h) Sec. 47, Ibid.

(i) Sec. 24, Ibid.

vide p. 26.

(j) Sec. 20, Act II, 1855.

(k) Act XIX, 1837.

*A.*—Yes.(*l*)

*Q.* 112.—Can a party to a suit be a witness therein, either in his own behalf or on behalf of any other party, and be compelled to produce any document in his possession or power, as if he were not a party?

*A.*—Yes.(*m*)

*Q.* 113.—May any person present in Court, whether a party or not, be compelled to give evidence in a suit, and to produce a document then and there in his possession?

*A.*—Yes.(*n*)

Title deeds.

*Q.* 114.—Is a witness bound to produce his own title deeds?

*A.*—No; unless he agreed in writing with the party requiring their production, or with some person through whom he claims to produce them.(*o*)

documents immaterial, and documents confidential.

*Q.* 115.—What documents is a witness, being party to the suit, not bound to produce at the instance of the opposite party?

*A.*—Documents not relevant or material to the cause of such opposite party. Neither is he bound to produce any confidential writing or correspondence which may have passed between him and his legal professional adviser, unless he offers himself as a witness, in which case he is bound to produce such writing or correspondence, provided it be relevant and material to the cause of the party requiring its production.(*p*)

documents held for another.

*Q.* 116.—Is a witness bound to produce a document held by him for any other person who would not be bound to produce it, if in his own possession?

*A.*—No.(*q*)

who cannot be witnesses.

*Q.* 117.—Who are incompetent to be witnesses in a suit?

*A.*—Children under seven years of age, and persons of unsound mind, who are incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.(*r*)

(*l*) Sec. 18, Act II, 1855.

(*m*) Sec. 19, Ibid.

(*n*) Sec. 25, Act II, 1855.

(*o*) Sec. 9, Act X, 1855.

(*p*) Sec. 22, Act II, 1855.

(*q*) Sec. 21, Ibid.

(*r*) Sec. 14, Ibid.

Q. 118.—How is the attendance of witnesses to be obtained? Summons.

A.—On the day on which the Exhibits and Lists of witnesses are filed, the Court should fix a day for the examination of witnesses, and issue a written summons against them to appear on such day.(e)

Q. 119.—What must the summons against a witness specify?

A.—It should specify the number of the suit, at whose instance it is issued, the name and residence of the witness and the date on which he should appear in Court.(f)

Q. 120.—Can a person of unsound mind be summoned as a witness? insane persons.

A.—Not without consent of the Court previously obtained.(g)

Q. 121.—What is the penalty if a witness not a party to the suit refuses to attend according to the summons; or, attending, refuses to give evidence, or to subscribe his deposition? recusing witness to be fined.

A.—If the witness refuse to attend, a Warrant may be issued to seize and bring him before the Court, and the Court may impose on such witness not having attended, or refusing to give evidence, a fine not exceeding 500 Rupees, and commit him to close custody until he gives his evidence and signs his deposition.(v)

Q. 122.—How should a party proceed to procure the attendance as a Witness, of any other party to the suit? application to summon party.

A.—He or his Vakeel should make a special application to the Court on the day the list of Witnesses is filed, for an order for a Summons to compel the attendance of the party, and should show satisfactory grounds in support of his application. In support of the cause shown, the Court should receive a written declaration from the party. The Court may, if it think fit, cause notice to be given to the party to show cause why he should not attend. If no sufficient cause be assigned a Summons should issue against him to attend and give evidence. But should he satisfy the Court that he has no personal knowledge of any

(e) Sec. 7, Reg. III, 1802.

Sec. 28, Reg. VI, 1816.

(f) Ibid.

(u) Cl. 2, Sec. 14, Act. II, 1855.

(v) Sec. 7, Reg. III, 1802.

material subject of enquiry in the suit, the Court need not compel his attendance as a Witness.(w)

recusing party  
how punishable.

Q. 123.—What is the penalty if a party to a suit fail to obey a summons against him to give evidence, or to produce a document, or refuse to depose or to sign his deposition?

A.—If the Plaintiff so fail and be unable to justify the failure, his suit may be at once dismissed with costs against him, and he will be debarred from preferring any other suit in respect of the same matter. If a Defendant so fail, his pleas in defence may be at once rejected, and the suit decided *ex parte*.(x)

Summons to  
produce docu-  
ment.

Q. 124.—State the law if any person, whether a party to the suit or not, to whom a summons is delivered to attend and give evidence or produce a document, and who, without lawful excuse, neglects or refuses to obey such summons; or is proved to have absconded or kept out of the way, to avoid being served with it?

A.—Such person is, in addition to fine, liable to the party at whose instance he may have been required to give evidence or produce a document, for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way, to be recovered in a civil action.(y)

Q. 125.—Can a person be summoned merely to produce a document without being summoned to give evidence?

A.—Yes.(z)

Q. 126.—Is a person summoned to produce a document bound to deliver it personally.

A.—No. It will be sufficient if he cause the document to be produced.(a)

Q. 127.—Is a witness bound to produce a document, notwithstanding there be a valid objection to the right of the party calling for it to compel its production; and how are such objections to be determined?

A.—The document must be produced by the witness or caused by him to be brought to Court. The validity of any

(w) Sec. 3 @ 4, Act X, 1855.

Cl. 26, 27, B. P. S. U.

(x) Sec. 8, Act X, 1855.

(y) Sec. 10, Ibid.

(z) Sec. 26, Act II, 1855.

(a) Ibid.

objections made to its production must be determined by the Court after receiving any admissible evidence, and after inspection of the document; calling to its assistance, if necessary, any person it may appoint to interpret the same who should previously be sworn to make a true interpretation thereof, and not to divulge its contents, except to the Court, unless the Court should order the document to be filed in evidence.(b)

Q. 128.—Can the hearing of a suit be postponed because of the non-attendance of the witnesses?

Postponement  
of hearing.

A. Not ordinarily. On the failure however of a party in a suit to attend and give evidence who may have been summoned for the purpose, due attention is to be paid to the wish of the party citing him to have his evidence secured, and postponement of the hearing or decision should be made for such purpose at his request, unless there be good reason to refuse compliance with the request.(c)

Q. 129. When may a Warrant issue against a witness?

Warrant against  
witness.

A.—On the party citing him certifying that he is necessary to his case, and that he has reason to apprehend he will not attend but upon compulsion. The issue of this process need not be contingent on the witness' mere failure to conform to the summons.(d)

Q. 130.—At what stage of a suit are the Witnesses to be examined?

3D HEARING.

A.—At the 3d or final Hearing.(e)

Q. 131.—What oaths are to be administered to witnesses, and who are exempted from taking an oath?

Oath.

A.—Witnesses of the Hindoo and Mohamedan religion are, instead of an oath, required to make a solemn affirmation in the form prescribed by Act V. of 1840. Those of different persuasion are to have such religious oaths administered to them as may be most binding on their consciences.(f) Witnesses of an immature age, or wanting or being defective of religious belief, are to give evidence on a simple affirmation declar-

(b) Sec. 23, Act II, 1855.

(c) Sec. 11, Act X, 1855.

Cl. 29, R. P. S. U.

(d) Sec. 7, Reg. III, 1802.

Sec. 4, Act XIX, 1855.

Cl. 30, 31, R. P. S. U.

(e) Cl. 35, Ibid.

(f) Sec. 7, Reg. III, 1802.

Sec. 20, Reg. IV, 1802.

ing that they will speak the truth, the whole truth, and nothing but truth. (g)

Examination  
of witnesses.

Q. 132.—State the mode of examining witnesses?

A. After having been duly sworn, witnesses, whether parties to the suit or not, are to be examined in open Court, under the personal direction and superintendence of the Judge. Their statements are to be recorded in a brief form as a narrative, and not by question and answer, unless special cause for recording question and answer in any particular instance may appear, as when a witness is guilty of prevaricating.(h) After a witness has been examined by the party who called him, he may be cross-examined by the other side; after which, the party who called the witness should be allowed to re-examine him with respect to any statements made by him in his cross-examination, but not on any new matter.(i) The Deposition when completed should be read over to the witness and signed by him in the presence of the Judge and of the parties to the suit, or their \akeels. (j)

Q. 133.—Can leading questions suggesting a particular answer be put to a witness?

A.—No. The questions proposed should be in such general terms as may simply elicit the information which the witnesses may possess on the points at issue.(k)

Q. 134.—Is a witness bound to answer questions which may tend to criminate him?

A.—Yes. But no such answer, except for the purpose of punishing him for wilfully giving false evidence, can subject him to arrest or prosecution, or be used against such witness in any criminal proceeding.(l)

Q. 135.—May a witness be examined as to conviction for felony?

A.—Yes. And upon being so questioned, if he either deny the fact or refuse to answer, it is lawful for the opposite party to prove such conviction.(m)

(g) Sec. 15, Act II, 1855.

(h) Sec. 12, 14, Act X, 1855.

Cl. 89, R. P. S. U.

(i) Cl. 37, Ibid.

(j) Sec. 12, Act X, 1855.

(k) C. O. 3d April 1815.

Cl. 2, Sec. 33, Reg. VI, 1816.

(l) Sec. 32, Act II, 1855.

(m) Sec. 33, Ibid.

Q. 136.—How is a witness to be cross-examined as to previous written statements made by him relative to the subject-matter under investigation?

A.—He may be examined without such writing being shown to him, but if it is intended to contradict him by the writing, his attention must first be drawn to those points thereof, which are to be used for the purpose of such contradiction. The Judge may at any time during the trial require the production of the writing for his inspection, and make such use of it for the purpose of the trial as he may think fit. (u)

Q. 137.—Can a former writing made by himself, or by any other person, be shown to a witness to refresh his memory?

A.—Yes. Such writing may be also shown to the adverse party who may, if he choose, cross-examine the witness upon it. (o)

Q. 138.—Under what circumstances may a *copy* of a document be shewn to a witness to refresh his memory?

A.—When the non-production of the original may be satisfactorily accounted for. (p)

Q. 139.—Is a former statement admissible to corroborate the testimony of a witness?

A.—Yes. (q)

Q. 140.—What amount of oral evidence is sufficient to prove a fact? Proof of fact.

A.—The direct evidence of one witness who is entitled to credit. (r)

Q. 141.—Will the improper admission or rejection of evidence be ground of itself for a new trial, or reversal of the decision in a case? Improper admission or rejection of evidence.

A.—Not if it should appear that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it would not have varied the decision. (s)

(u) Sec. 34, Act II, 1855.

(o) Sec. 45, Ibid.

(p) Sec. 46, Ibid.

(q) Sec. 31, Ibid.

(r) Sec. 28, Ibid.

(s) Sec. 57, Ibid.

Cl. 62, R. P. S. U.



Purdah Nusheen women.

Q. 142.—How is the evidence of Purdah Nusheen women to be obtained ?

A.—The Court should issue a Commission to any of its Officers or other person for the examination of such females. The examination should be conducted in the hearing of the parties or their Vakeels in such manner as the Court may direct, having regard to the custom and usage of the country and with liberty to the parties or the Vakeels to cross-examine. (f)

Zemindars &c.

Q. 143.—What is the rule in regard to the summoning of Zemindars and other individuals of rank and respectability as witnesses ?

A.—The Court should, as much as possible, avoid summoning them, and when their attendance may be indispensable, they should be treated with the consideration due to their station in life. (w)

Revenue servants.

Q. 144.—How is the evidence of a native Revenue Officer above the rank of Peon to be obtained ?

A.—After communicating with the Collector, the Judge should issue a summons for the attendance of the Revenue Officer on a day proposed by the Collector, unless special circumstances should require his attendance on a day fixed by the Court. (v)

Absent witnesses.

Q. 145.—State the mode in which the evidence of witnesses beyond the jurisdiction of the Court requiring their evidence, should be obtained ?

A.—By means of a Commission issued to the Court within whose jurisdiction they reside, for their examination upon Interrogatories, as prescribed by Act VII. of 1841. A copy of the Points required to be proved should be sent, together with the Interrogatories. (w)

Perjury.

Q. 146.—What is Perjury ?

A.—Perjury is the giving intentionally and deliberately on oath or solemn affirmation, a false deposition, or two contradictory depositions, on a matter of fact material to the issue of a judicial proceeding. (w)

(f) Sec. 18, Act X, 1855.

(w) C. O. 9th October 1835, No. 18.

1st March 1827.

25th August 1823.

(v) C. O. 25th August 1823.

(w) C. O. 23rd November 1831.

(x) Cl. 1, Sec. 4, Reg. VI, 1811.

Cl. 1, Sec. 2, Reg. III, 1826.

Sec. 2, Act. V, 1840.

Q. 147.—What is subornation of Perjury?

A.—Subornation of Perjury is the procuring, or causing another person to commit the offence of Perjury.(y)

Q. 148.—How is a person giving a false deposition on oath or solemn affirmation to be convicted of the crime of Perjury?

A.—Either by his free and voluntary confession, or by the testimony of credible witnesses or by strong circumstantial evidence.(z)

Q. 149.—What points should be established in order to convict a party or witness giving two contradictory depositions on oath or solemn affirmation, of the crime of Perjury?

A.—The contradictions between the *two* depositions must be direct and positive, and there must be strong ground to presume the corrupt intention of the party or witness.(a) Contradictions in one deposition cannot be charged as Perjury.(b)

Q. 150.—If a party or witness before a District Moonsiff be guilty of Perjury or Subornation of Perjury, how should the Moonsiff proceed?

A.—He should forward the accused with the proceedings on which the charge is founded, to the subordinate Criminal Court with his sentiments on the case; and the Judge of that Court should dispose of the same.(c) •

Q. 151.—What is Forgery?

Forgery.

A.—Forgery means all fraudulent and injurious fabrications, or alterations of written deeds, or written or printed papers of whatever description, as well as all counterfeit seals or signatures thereto, and the illicit imitation of any public stamps or stamped paper established by Government.(d)

Q. 152.—Is the mere fabrication or alteration of a deed or signature sufficient to convict a person of Forgery?

A.—No. The effect and object of the fabrication or alteration must be to defraud some party of money or other property, and to injure him.(e)

(y) Cl. 2, Sec. 4, Reg. VI, 1811.  
Sec. 3, Act V, 1840.

(z) Cl. 1, Sec. 3, Reg. VI, 1811.

(a) Cl. 1, Sec. 3 Reg. III, 1826.

(b) F. U. Pro. 8th January 1835.

(c) Cl. 1, Sec. 3, Reg. VIII, 1829.

(d) Cl. 3, Sec. 4, Reg. VI, 1811.

(e) C. O. F. U. 28th Aug. 1841. No. 145.

Q. 153.—Are persons convicted of procuring or causing a forgery liable to a less severe punishment than those convicted of the actual forgery?

A.—No. In both cases the punishment prescribed by the law is the same. (f)

Q. 154.—If there be no fraud or injury intended in a fabrication or alteration of a deed or signature, how is the offence punishable?

A.—It may be punished, under the Mahomedan law, as a misdemeanor, but it cannot be treated as a Forgery. (g)

Q. 155.—In cases where a party before a District Moonsiff may be considered guilty of Forgery, how should the Moonsiff proceed?

A.—He should forward the party to the Magistrate, or the Head of District Police together with the instrument held to have been forged, and copies of such depositions and documentary evidence as may have satisfied the Moonsiff of the Forgery. The Magistrate or Police Officer, as the case may be, will determine on the propriety of committing the party to the Subordinate Zillah Court for trial. (h)

Judgment.

Q. 156.—When is judgment in a cause to be given, and in what is it to be embodied?

A.—After the witnesses have been examined, and the parties or their Vakeels heard orally upon the evidence, the Judge should give judgment in the suit. (i) The judgment is embodied in a Decree which forms the record of it. (j)

Q. 157.—How are the Courts to decide cases for which no specific rule exists?

A.—According to justice, equity and good conscience. (k)

Q. 158.—When is a Court to declare its judgment in a cause, and how is it to be declared?

A.—Judgment is to be declared when the draft of the De-

(f) Cl. 3, Sec. 4, Reg. VI, 1811.

Sec. 36, Reg. VI, 1816.

(g) C. O. F. U. 28th Aug. 1841. No.

Cl. 40, R. P. S. U.

145.

(j) Sec. 1, Act XII, 1843.

(h) C. O. F. U. 7th Dec. 1853. No.

(k) Sec. 17, Reg. II, 1802.

200.

Sec. 34, Reg. IV, 1802.

(i) Sec. 9, Reg. III, 1802.

cree is ready for transcription.(l) The proper course for declaring judgment is by reading a short abstract thereof in the language of the Court.(m)

Q. 159.—In whose handwriting should the draft of the Decree be, and what language should it be written in ?

A.—It should be in the handwriting of the Judge and in his own vernacular language.(n) Should his language be different to that ordinarily used in the Court, a translation should be made and incorporated in the Record.(o)

Q. 160.—What is the mode in which a Decree should be drawn up, and what particulars should it set forth ?

Form of Decree,

A.—It should be drawn up by setting forth the following particulars in the following order ;

1st. The name of the parties should be placed in two columns at the head of the Decree, those of the Plaintiffs on the left hand, and those of the Defendants on the right ;

2dly. A brief abstract of the Pleadings ; no notice being taken of the Reply and Rejoinder, unless some material matter be stated therein ;

3rdly. The points in dispute as recorded by the Court on the 1st Hearing ;

4thly. A list of documents and of the witnesses examined ;

5thly. The decision ; it being introduced with the heading " Judgment." When objections to jurisdiction &c. may have been decided favorably to the Plaintiff at the preliminary hearing, such decision should be first recorded in a distinct paragraph. After this any admissions made on either side at the 1st Hearing on the merits should be entered, also in a separate paragraph. The Judgment on the points in issue should then be given, each point, when practicable, being treated in its order and in a distinct paragraph. The Decree should conclude with a specification of the costs.(p)

Q. 161.—Within what time should a District Moonsiff tender copies of his Decree to the parties in the suit ?

Copies to parties,

A.—Within one week from the date of the Decree, two copies should be prepared and tendered to the parties.(q)

(l) C. O. 18th Octr. 1824.

(m) C. O. 9th February 1826.

(n) C. O. 18th Octr. 1824.

(o) Sec. 1, Act XXXIII, 1854.

(p) Cl. 41 @ 49, R. P. S. U.

(q) Cl. 1, Sec. 28, Reg. VI, 1816.

Stamp.

Q. 162.—On paper of what stamp-value should copies of Decrees furnished to the parties, be written?

A.—Those passed by the Sudr Udalut should be on paper of 4 Rupees;

Those by Zillah Judges, on paper of 2 Rupees;

Those by Subordinate Judges, Assistant Judges and Principal Sudr Ameens, on paper of 1 Rupee;

Those by Sudr Ameens on paper of 8 annas.(r)

Decrees of District Moonsiffs are not required to be written on stamped paper.(s)

Execution of Decree.

Q. 163.—How is a Decree holder to obtain enforcement of the Decree against the opposite party?

A.—He should appear, either in person or by Vakeel, before the Court which pronounced the Decree, and present a Petition praying that it may be carried into execution.(t)

Q. 164.—Must the Petition praying execution of a Decree be written on stamped paper?

A.—If presented to a higher Court than a District Moonsiff's, it must be written on stamped paper of the value prescribed by Section 20, Regulation XIII of 1816; but if to a District Moonsiff, on plain paper.(u)

Q. 165.—What particulars should be set forth in the Petition for execution?

A.—It should state the number of the suit, the names of the parties, the date and substance of the Decree, whether any appeal has been preferred or admitted from the decision and whether any adjustment of the matter in dispute has been made between the parties subsequently to the Decree; also what specific amount is due to the Petitioner under the Decree.(v)

Q. 166.—In what cases should a Notice issue to the opposite party, requiring him to show cause why the Decree should not be executed against him?

A.—In cases of *ex parte* decisions, and where an interval of

(r) Cl. 1, Sec. 22, Reg. XIII, 1816.

(s) Sec. 39, Reg. VI, 1816.

(t) Cl. 5, Sec. 14, Reg. XV, 1816.

Sec. 45, Reg. VI, 1816.

(u) Cl. 5, Sec. 14, Reg. XV, 1816.

Sec. 39, Reg. VI, 1816.

(v) Cl. 6, Sec. 14, Reg. XV, 1816.

Sec. 45, Reg. VI, 1816.

more than one year may have elapsed between the date of the Decree and the application for execution.(w)

Q. 167.—Is a private adjustment of a Decree admissible by the Courts ?

A.—No ; unless the terms of the adjustment are previously declared by the parties interested therein, and made a record of the Court with their unanimous consent.(x)

Q. 168.—Can a Decree be executed after the lapse of 12 years from the date of its being passed ?

A.—Not unless the party applying for execution clearly proves that his application is on one or other of the grounds specified in Clause 4, Section 18, Regulation II of 1802, excepted from the general rule of limitation prescribed in that Section.(y)

Q. 169.—How are Decrees for real property or moveable, to be executed ? Delivery of  
real property.

A.—The Court should issue process to cause the property to be delivered to the party to whom it may be decreed.(z)

Q. 170.—What is the mode of executing Decrees awarding payment in money ? Warrant.

A.—The Court should issue a Warrant for the production of the money, or else of the person indebted. If the judgment debtor be not found, the Peon entrusted with the warrant should affix on the debtor's usual place of abode, or on the Village Choultry, a Proclamation informing him of the issue of a Warrant against him.(a)

Q. 171.—What is the procedure if the judgment debtor be not apprehended for two months ?

A.—The Court, on the request of the judgment creditor, may attach and sell any property of the debtor that may be pointed out. The Peon in charge of the Warrant should however remain in the Village, until the debtor be secured, or the decree be satisfied.(b)

(w) Cl. 8, Sec. 14, Reg. XV, 1816.

(x) C. O. 15th Aug. 1837. No. 48.

(y) C. O. 12th Sept. 1851. No. 123.

(z) Sec. 9, Reg. III, 1802.

Sec. 46, Reg. VI, 1816.

C. O. 31st May 1854.

(a) C. O. 31st May 1854. No. 132, B.

(b) Ibid.

Attachment of  
property.

Q. 172.—State the procedure if the Judgment debtor be apprehended and produced in Court?

A.—The Debtor, if unable to come to terms with his creditor is to be required to point out property available for satisfaction of the debt, failing which he is to be lodged in Jail. If the debtor be willing to point out property he is to be permitted to do so, being nevertheless kept under charge of a Peon until he may have adjusted the demand against him or been committed to Jail.(c)

Dismissal of  
application for  
execution.

Q. 173.—Under what circumstances may the Courts summarily strike off an application for execution of a Decree?

A.—The application may be struck off if the Judgment creditor fail within twenty-four hours to pay the monthly allowance required by Section 10 Regulation III of 1802 for the support of the debtor while in Jail, or to advance the requisite batta to Peons which any of the forms of procedure in execution of the Decree may render necessary.(d)

Claims to pro-  
perty attached.

Q. 174.—Within what time should claims to property attached in satisfaction of a Decree be preferred?

A.—Within one month from the date of attachment.(e)

Q. 175.—What claims to attached property should be disposed of after an investigation, and what without?

A.—Claims to property pointed out by the judgment debtor should be disposed of without an investigation, the property in such cases being at once released. But claims to property pointed out by the creditor, or such claims to property pointed out by the judgment debtor as the creditor may desire on special grounds to be investigated, should be disposed of after an enquiry.(f)

Q. 176.—Of what nature should the enquiry into claims preferred to attached property be?

A.—The enquiry should be a summary one, by means of documents and witnesses; and a summary decision should be passed, releasing or selling the property as the Court may determine.(g)

(c) C. O. 31st May 1854, No. 132, B.

(d) Ibid.

(e) Ibid.

(f) Ibid.

(g) C. O. 23rd February 1831.

**Q. 177.**—Should a mortgage claim against property attached in satisfaction of a Decree, be established before the Court, what order should be passed?

Release of property.

**A.**—The property should be released from attachment.

**Q. 178.**—In what cases can attached property found to be mortgaged be sold?

Sale of mortgaged property.

**A.**—If the property remain in the hands of the mortgager, and there be reason to believe that it is worth more than will suffice to discharge the mortgage debt, the Court may have it sold, and pay off with the proceeds first, the mortgage, and then, as far as the proceeds will go, the amount due under the decree. But where an advance on mortgage is made on condition of putting the property for a specified period into the possession of the mortgagee, he having enjoyment of the usufruct, a sale prior to that period might operate determinately to the interests of the mortgagee. The circumstances of such cases will however determine the course to be followed.(k)

**Q. 179.**—What things are exempt from attachment by the Courts?

What things cannot be attached.

**A.**—The Enams, emoluments and allowances referred to in Regulations IV and VI of 1831, and Acts XXXI of 1836 and VI of 1849.

**Q. 180.**—How are persons setting up fictitious claims to property attached, punishable?

Fictitious claims how punishable.

**A.**—They are punishable by fine not exceeding 200 Rs. and by being kept in custody until the fine be paid;(i) but no such person can be kept in custody for a term exceeding two months.(j)

**Q. 181.**—Is any reference necessary to the Revenue Authorities where land is attached in satisfaction of a Decree?

Reference to Collector.

**A.**—Yes. In all such cases the Courts should immediately upon the attachment being made, direct the Government Vakeel to notify to the Collector the purpose for which the attachment was made and the date fixed for the sale. The Collector will offer his objections, if he have any, before such date.(k)

(k) C. O. 16th November 1829,

(j) Act VI, 1836.

C. O. 30th October 1834. No. 6.

(i) C. O. 15th Febry. 1847. No. 110.

(i) Sec. 2, Reg. I, 1832.



Appeal.

Q. 182.—Does an appeal lie from summary decisions on claims to property attached for sale?

A.—A summary appeal lies from such decisions, and the Courts rejecting such claims should always, before proceeding to sale, allow the claimants time to appeal.(7)

Annulment of sale.

Q. 183. Can the Courts annul a sale, on a summary investigation of claims to the property sold?

A.—A sale, unless proved to have been fraudulently conducted, cannot be annulled.(m) Claimants after sales regularly conducted, can only recover by regular suit. The proceeds of sale, if not paid over when the claim is preferred, should be held in deposit to abide the issue of the suit, when, if the claim be established, they will be available in satisfaction of any claim the real owner may make good beyond the bare recovery of his property, and the supposed owner will still be liable for the amount of the Decree in satisfaction of which the property was erroneously sold.(n)

Payment by instalments.

Q. 184.—Can the amount of a Decree be satisfied by instalments?

A.—Where property is available, instalments should not be allowed, unless the Decree-holder consents to waive his right of immediate enforcement under an engagement for gradual payment. But where no property can be pointed out from which the Decree may be satisfied, and the judgment debtor or his Surety, is willing to engage under sufficient security, for the liquidation of the amount due, by instalments, the Court may accept the engagement so offered, and cause execution of the Decree in conformity therewith: In such cases, if the person delivering the accepted engagement have been in custody, he is to be immediately discharged and is not liable to further arrest in execution of the same judgment, nor is any interest chargeable in such instances beyond what may be stipulated in the engagement.(o)

Insolvency Rules.

Q. 185.—State the provisions of the law in regard to insolvent debtors and their Sureties who may be in confinement for the satisfaction of Decrees?

A.—The Court, on receiving from the person confined, in

(7) C. O. 6th Feb. 1837, No. 41, B.

(m) C. O. 11th Oct. 1827.

S. U. Pro. 26th Aug. 1837.

(n) C. O. 11th Oct. 1827.

(o) Sec. 11, Reg. II, 1811.

such cases, a statement on oath containing a full and fair disclosure of all property belonging to him, whether held in his own name or in the names of any other persons, or jointly with others; should institute an enquiry into the truth of the statement, and into the validity of any objections thereto which may be offered by the confining creditor. If the result of the enquiry satisfy the Court that the statement is true and faithful, the property included therein; or such part thereof as the Court may deem it proper to sell in satisfaction of the judgment, should be put up for sale, and the person confined be released, either with or without Hazirzamani security.(p)

Q. 186.—Under what circumstances can a judgment debtor, released from custody, under the insolvency rules, be again arrested and his property sold on account of the same judgment?

A.—If the judgment be not fully satisfied, the creditor, upon proving to the Court that the released party had, at the time of his discharge, fraudulently concealed property belonging to him, the Court should again arrest the debtor and bring to sale any property possessed by him.(q)

Q. 187.—Are orders passed by the Courts on applications for the benefit of the insolvency rules final?

A.—No: they are subject to revision by the higher Court of appeal.(r)

Q. 188.—How is resistance to the sale or transfer of property in execution of a Decree of a District Moonsiff punishable?

Resistance of  
execu<sup>n</sup> pro-  
cess of D. M.

A.—It is punishable by fine not exceeding 200 Rupees, and, in default of payment, by imprisonment not exceeding one month.(s)

Q. 189.—How are judgments in places beyond the jurisdiction of the Courts pronouncing them to be executed?

Execution in  
different Zillah.

A.—In the mode prescribed by Acts XXXIII of 1852 and XXXIV of 1855.

Q. 190.—In what cases are the Courts to employ Ameens, and with what object?

AMEENS when  
to be employed.

A.—In cases of disputed property, regarding lands, houses or their limits or boundaries, in which the Court may deem a local

(p) Sec. 10 Reg. II, 1811.

(r) Ibid.

(q) Sec. 11, Ibid.

(s) C. O. 9th January 1856, No. 137.

investigation desirable, it may depute an Ameen for the purpose of such investigation. (i)

Q. 191.—What is the effect of the report of an Ameen employed to make a local investigation in cases of disputed property?

A.—The report is to be received as evidence touching the matter he may have been commissioned to investigate. (u)

Q. 192.—By whom are the expenses of an Ameen employed for local inquiry payable?

A.—By the party against whom the decree may be passed. (v)

Reference to  
LAW OFFICERS.

Q. 193.—In what suits are the opinions of Native Law Officers to influence the decision?

A.—Suits regarding succession, inheritance, marriage, caste and all religious usages and institutions are to be decided in accordance with the Mahomedan law with respect to Mahomedans, and the Hindoo Law with respect to Hindoos. The Mahomedan and Hindoo Law Officers are to expound the law of their respective persuasions. (w)

Q. 194.—How is a District Moonsiff to obtain an exposition of the Hindoo or Mahomedan Law on points arising in suits before him?

A.—Through the medium of the Zillah Judge, to whom the Moonsiff should forward an abstract of the case for transmission to the Law Officer. (x)

Q. 195.—What notification should be made by a District Moonsiff in suits relative to the inheritance of, or succession to, landed property?

A.—He should affix a notification in his Court-house, of the claim preferred, with a requisition to all persons who may have any claim to the property, to prefer the same within a limited period; and the decision is to include all claimants who, according to the law of the parties, whether Mussulman or Hindoo, have a title to share in the property. (y)

(i) Sec. 18, Reg. III, 1802.

(u) Ibid.

(v) Ibid.

(w) Cl. 1, Sec. 16, Reg. III, 1802.

Cl. 1, Sec. 62, Reg. VI, 1816.

(x) Sec. 4, Reg. II, 1828.

(y) Cl. 2, Sec. 62, Reg. VI, 1816.

**Q. 196.**—What rates of interest are the Court to allow in their Decrees? INTEREST.

**A.**—On transactions prior to the passing of Act XXVIII of 1855 the Courts are to decree interest on money lent at a rate not exceeding 12 per centum per annum; when however a lower rate may have been stipulated between the parties, such lower rate should be adjudged.<sup>(z)</sup> On transactions subsequent to the above Act the rate agreed upon by the parties should be adjudged, and if no rate shall have been agreed upon, such rate as the Court shall deem reasonable.<sup>(a)</sup>

**Q. 197.**—Is interest to be adjudged up to the date of Decree, or to the date of Plaint?

**A.**—To the date of Decree, unless there be reasons for a contrary award, which reasons should be stated in the body of the Decree.<sup>(b)</sup>

**Q. 198.**—Is interest allowable on the costs of a suit?

**A.**—Yes.<sup>(c)</sup>

**Q. 199.**—In executing a Decree, is interest to be levied on the principal and interest adjudged?

**A.**—It is to be levied only on the principal and costs; not upon the interest also.<sup>(d)</sup>

**Q. 200.**—In what cases is rent or profit to be adjudged, and recovered up to the execution of Decree?

**A.**—Rent or profit can be adjudged when the lands, houses or other property yielding it, is sued for together with such rent or profit;<sup>(e)</sup> and when it may be proved, by evidence, to have been received from the property, it is recoverable up to the date the Decree is executed.<sup>(f)</sup>

**Q. 201.**—Can interest exceeding the principal be adjudged?

**A.**—No; unless the accumulation has been subsequent to the institution of the suit and is not ascribable in any degree to procrastination on the part of the creditor.<sup>(g)</sup>

**Q. 202.**—Is a contract stipulating the enjoyment by the creditor of the usufruct of property in lieu of interest, binding on the parties?

**A.**—Yes.<sup>(h)</sup>

<sup>(z)</sup> Sec. 2 and 3, Reg. XXXIV, 1802.

Sec. 7, Act XXVIII, 1855.

<sup>(a)</sup> Sec. 2, Ibid.

<sup>(b)</sup> C. O. 11th May 1829.

<sup>(c)</sup> C. O. 26th April 1847, No. 110 C.

<sup>(d)</sup> Ibid.

<sup>(e)</sup> D. S. A. 36 of 1852.

<sup>(f)</sup> C. O. 22d Oct. 1829.

<sup>(g)</sup> C. O. 23d June 1829.

<sup>(h)</sup> Sec. 4, Act XXVIII, 1855.

**Q. 203.**—In an adjustment of accounts between the lender and the borrower of money upon any mortgage, or conditional sale of landed property, or other contract, at what rate should interest be calculated?

**A.**—It should be calculated at the rate stipulated by the parties, or if no rate have been stipulated and interest be payable under the contract, at such rate as the Court may deem reasonable. (i)

Resistance of  
process;  
by Zemindars,

**Q. 204.**—If a Zemindar, talookdar or other proprietor of land resist a process of a Zillah or Subordinate Zillah Court, what procedure should take place, and how is the offence punishable?

**A.**—On the resistance being proved on oath, the Court should summon the party to answer to the charge. If he evade service of the summons, the Court should issue a Proclamation as in the cases of Defendants in original suits who may avoid being served with the Notice requiring them to answer. If the party do not appear within the time limited, or if he do appear, and the Court, after receiving his answer and hearing the evidence he may adduce, consider the charge to be established, it may either fine him in such sum as it may think proper with reference to the nature of the offence and the situation in life of the offender, or the Court may decree that his Zemindary or Estate be forfeited. (j)

**Q. 205.**—Is any appeal allowed from a Decree adjudging forfeiture of the lands of a Zemindar &c. for resisting a process of a Court.

**A.**—A summary appeal can be preferred to the proper superior Court. But no appeal lies to the Sudr Udalut, unless the annual produce of the lands (according to the amount paid and payable to the offender by the dependant talookdars, under-farmers and ryots on account of the year in which the Decree may be passed) exceeds 1000 Rupees. (k)

**Q. 206.**—When is a Decree adjudging forfeiture of the lands of a Zemindar &c. for resisting a process of a Court, to be enforced?

**A.**—It is to be enforced after it has been confirmed by the Government, to whom it should be forwarded, with the proceed-

(i) Sec. 6, Act XXVIII, 1855.

(j) Sec. 23, Reg. III, 1802.

Sec. 23, Reg. IV, 1802.

(k) Ibid.

ings, by the Appellate Court, if an appeal had been preferred or by the Court which passed the decree, if no appeal had been made. The Government is vested with the power either of confirming the decree, or of commuting the forfeiture of land for an adequate fine.(l)

Q. 207.—When the lands of a Zemindar may be adjudged to be forfeited on account of resistance of Court process, how is the Decree to be enforced?

A.—The Court should issue a Precept to the Collector to depute an Ameen with a proper establishment of officers to sequester the lands and collect the rents and revenues; or if the lands be deemed too inconsiderable to bear the expense of an Ameen, the Precept is to direct the Collector to order the nearest Tahsildar, or any other officer employed under him in the business of the collections, to take charge of the lands.(m)

Q. 208.—How is a Farmer holding his farm immediately of Government punishable for resisting legal process? by Farmers,

A.—He is subject to the same penalties as a resisting Zemindar; (n) but with this difference that the Government may either direct execution of a decree adjudging the lease of a farmer to be annulled, or may commute the forfeiture for fine; or, if the offender be not desirous of being continued in his farm, the Government may fine him and compel him to retain the farm during the remainder of the lease, and hold him and his surety responsible for the discharge of their engagements.(o)

Q. 209.—How should a Zillah Court proceed if any person not being a Zemindar, Talookdar or a Farmer, resist a legal process, and how is the offence punishable? by persons not holding land.

A.—The Court should proceed in the first instance as against a resisting Zemindar. If the charge be proved, the offender is to be fined in such sum as the Court may think proper with reference to the offence and the situation in life of the offender. If the offender do not prefer a summary appeal within the prescribed time, the Court is to levy the amount by the

(l) Sec. 23, Reg. III, 1802.

Sec. 25, Reg. IV, 1802.

(m) Ibid.

(n) *Vide p. 44.*

(o) Cl. 1, Sec. 25, Reg. III, 1802.

Sec. 25, Reg. IV, 1802.

same process by which it is empowered to execute its Decrees for personal property. (p)

Resistance of  
process of D. M.

Q. 210.—How is a District Moonsiff to proceed against a person charged with resisting a process of his Court?

A.—On the complaint being made on solemn affirmation, the Moonsiff is to summon the accused to answer to the charge, and, if the offence be proved to his satisfaction, may adjudge the offender to pay a fine not exceeding 50 Rupees, commutable to imprisonment for a term not exceeding one month in the civil Jail. (q)

Contempt of  
Court.

Q. 211.—How is a person guilty of contempt of Court, or of undue arrogations of the authority of the Court in his own cause, punishable?

A.—He is liable to a fine not exceeding 200 Rs., and if the fine be not paid, by being kept in custody for a term not exceeding two months. (r)

Obstructing  
justice.

Q. 212.—What is the punishment if a person use menacing gestures or expressions, or otherwise obstruct justice, in the presence of a Court?

A.—Fine to an amount not exceeding 200 Rupees, in default of payment, imprisonment for a period not exceeding one month. An appeal, if preferred within one month, lies from the award in such cases, to the proper superior Court. (s)

DEFAULT.

Q. 213.—What period does the law allow the Plaintiff for proceeding with his suit, and what course should the Court follow, if he fail to proceed within that period?

A.—The Plaintiff is allowed six weeks to proceed with his suit. Should he fail to do so, the suit should be dismissed without any previous notice being given to him, and the Defendant's costs be borne by the Plaintiff. (t)

Q. 214.—If the six weeks allowed by law elapse, can the Court grant further time to the Plaintiff for proceeding with the suit?

A.—Yes, if the Plaintiff upon special application satisfy the Court of the propriety of allowing further time. The reasons

(p) Sec. 26, Reg. III, 1802.

Sec. 26, Reg. IV, 1802.

(q) Sec. 5, Act XIX, 1855.

(r) Sec. 22, Reg. III, 1802.

Act VI, 1836.

(s) Sec. 1, Act XXX, 1841.

(t) Sec. 1 and 2, Act XXIX, 1841.

for complying with the application should be recorded at large upon the proceedings; but the reasons for refusing an application need not be recorded.(u)

Q. 215.—What is the precise nature of the default for which a suit is dismissible under Act XXIX of 1841?

A.—The default should be such as may present a positive impediment to the progress of the suit, as when the Plaintiff may omit to amend his Plaint in some essential particular, or to include as Defendant a party necessary to be made Defendant, or to adduce his evidence, or to attend for the examination of his witnesses,(v) or to appoint, upon receiving due notice, another Vakeel in lieu of the one previously retained who may have died, resigned or been removed, or may be unable to attend Court from protracted indisposition or other cause.(w) The mere appearance of a Plaintiff in Court will not save him from being accounted in default. He must actually perform what is required of him within the six weeks, or the extended term allowed him, to avoid incurring the consequences of default.(x)

Q. 216.—What will remedy the default of a Plaintiff?

A.—A Plaintiff's default will be cured if the opposite party, passing over the default, take any step in the suit, or if the Court pass judgment whether such opposite party has, or has not, taken any such step.(y)

Q. 217.—Is the dismissal of a suit under Act XXIX of 1841, any bar to the institution of a new suit?

A.—No, unless the party is precluded by lapse of time under the statute of limitation.(z)

Q. 218.—Does the dismissal of a suit under Act XXIX of 1841 stay the operation of the law of limitation?

A.—No; the time will still run from the date of the original cause of action.(a)

Q. 219.—Does any appeal lie from a decision dismissing a suit under Act XXIX of 1841?

A.—None, excepting a summary appeal on the fact of default.(b)

(u) Sec. 1, Act XXIX, 1841.

(v) Cl. 32 and 33, R. P. S. U.

(w) Cl. 1, 2 and 4, Sec. 18, Reg. XIV, 1816.

Sec. 11, Act I, 1846.

(x) Cl. 34, R. P. S. U.

(y) Act XVII, 1847.

(z) Sec. 2, Act XXIX, 1841.

(a) Sec. 2, Ibid.

(b) Sec. 3, Ibid.



REVIEW OF  
JUDGMENT.

**Q. 220.**—Under what circumstances is an application for a review of judgment admissible?

**A.**—If the judgment be not appealed from, and if from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time the Decree was passed, or from any other good and sufficient cause, a party may consider himself aggrieved by the Decree, he may apply, by Petition, to the Court which passed it, for a review of judgment.(c)

**Q. 221.**—On paper of what stamp-value must a Petition praying for a review of judgment be written, and within what time must it be presented?

**A.**—If presented to a Court of higher jurisdiction than a District Moonsiff's, the Petition must be written on stamped paper of the value prescribed for Answers, Replies and Rejoinders in regular suits, and it must be put in within three months from the date the Decree was signed and sealed.(d)

Petitions for review presented to a District Moonsiff, should be on unstamped paper and be put in within one month from the date of the delivery or tender of the copy of the Decree.(e)

The Courts are authorised to admit applications, after the limited period, if satisfactory cause be shown for the delay.(f)

**Q. 222.**—If a Zillah, or a Subordinate Zillah Court be of opinion that the review of judgment applied for is not necessary, how should it proceed, and how, if the review be deemed necessary?

**A.**—If the Court consider that there are no sufficient grounds for a review, it should reject the Petition. If it consider the review necessary, it should forward to the Sudr Udalut a statement of the grounds of its opinion, with a copy of the Petition and a copy of the Decree passed in the case.(g) The Sudr Udalut will grant the review, if the circumstances appear to them to require it.(h)

**Q. 223.**—How is a District Moonsiff to act if he considers a review of judgment applied for, necessary?

(c) Cl. 2, Sec. 6, Reg. XV, 1816.

(d) Ibid.

(e) Sec. 7, Act XIX, 1855.

(f) Cl. 2, Sec. 6, Reg. XV, 1816.

) Cl. 2, Ibid.

(h) Cl. 3, Ibid.

*A.*—He should report the case to the Zillah Judge, who may permit the review, if he thinks it necessary.(i)

*Q.* 224.—Is an order of the Sudr Court rejecting a Petition for a review of judgment in the first instance, or of the higher Court refusing to sanction a review applied for by a lower Court, any bar to the party instituting a regular appeal?

*A.*—No, subject to the conditions and rules prescribed for the admission of regular appeals.(j)

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(i) Sec. 7, Act XIX, 1855.

| (j) Cl. 4, Sec. 6, Reg. XV, 1816.



## **PART II.**



### **SUMMARY SUITS.**



## SUMMARY SUITS.

Q. 225.—What particular original suits before District Moonsiffs fall within the description of summary suits ? What suits are summary.

A.—Those for sums of money or other personal property, of an amount of value not exceeding 20 Rupees.(k)

Q. 226.—What Pleadings are allowed in summary suits ? Pleadings.

A.—The Plaint and Answer.(l)

Q. 227.—What should the Plaint set forth, and what should accompany it ? Plaint.

A.—It should briefly state the cause of action ; and if founded on a bond or other document, such bond or document should be filed with the Plaint.(m)

Q. 228.—Must the Plaint be written on stamped paper ?

A.—Yes ; if the value of the suit do not exceed 16 Rupees on paper of one Rupee, and if the value exceed 16 Rupees on paper of 2 Rupees.(n)

Q. 229.—How should the Answer be recorded ? Answer.

A.—It should be recorded by the Moonsiff as a statement and signed by the Defendant. Should the Defendant object to sign the Answer thus prepared, he should be required to file a brief Answer himself.(o)

Q. 230. Must the Answer be written on stamped paper ?

A.—No.(p)

Q. 231.—When are the Pleadings to be considered completed ? Completion of pleadings.

A.—On the expiration of the period limited in the Notice to the Defendant requiring him to answer, or on the suit being declared *exparte*. If, however, the Defendant appear at any time

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(k) C. O. 22nd July 1854, No. 132. D. | (n) Sec. 13, Reg. XIII, 1816.

(l) Ibid.

(o) C. O. 22nd July 1854, No. 132. D.

(m) Ibid.

(p) Sec. 39, Reg. VI, 1816.

before the close of the trial, he and the Plaintiff should be confronted and examined, and the Defendant allowed to cross-examine the Plaintiff's witnesses.(g)

Trial.

Q. 232.—How does the trial of a summary suit differ from that of a regular suit ?

A. In summary suits no Points are to be recorded by the Court as in regular suits, and instead of the depositions of the witnesses being taken down in writing, brief notes of their statements are to be made by the Moonsiff, for his guidance in framing his Decree. Summary suits are moreover to be tried without reference to their order on the file.(r)

Q. 233.—Are the provisions of Act XXIX of 1841 applicable to summary suits ?

Decree.

Q. 234.—How is the Decree to be drawn up ?

A.—The Decree should state in the beginning the amount at issue, the nature of the liability in each Defendant, and specify shortly and distinctly in its body, what each party has proved, or failed to prove.(t)

Appeal.

Q. 235.—Is an appeal allowed from the Decree ?

A.—No ; the Decree of the District Moonsiff is final.(u)

(g) C. O. 22nd October 1856.

(s) C. O. 22nd July 1854, No. 132. D.

(r) C. O. 22nd July 1854, No. 132. D.

(t) C. O. 26th February 1856.

Cl. 38, R. P. S. U.

(u) Sec. 43, Reg. VI, 1816.

## **PART III.**



## **SPECIAL SUITS.**





# SPECIAL SUITS.

## SECTION I.

### PAUPER SUITS.

Q. 236.—What are the privileges of the Pauper Law? Legal privileges.

A.—Exemption from the expense of stamps, fees, and of all costs attending the execution of process.(v)

Q. 237.—Who are admissible to sue as Paupers? Who may sue.

A.—Persons unable, by reason of poverty, to defray the expenses of a law suit, may be admitted to sue as Paupers; but a person who voluntarily divests himself of his property or refuses to take possession of it, is not entitled so to sue.(w)

Q. 238.—What Courts are competent to entertain Pauper suits, and what Courts are not so competent? What Courts can entertain suits, and what, cannot.

A.—They may be instituted before the Sudr Udalut, and the Zillah and the Subordinate Zillah Courts.(x) Sudr Ameens and District Moonsiffs cannot receive them;(y) but the Zillah Judge may refer to the Sudr Ameens and District Moonsiffs within his jurisdiction such Pauper suits admitted by him as may, with reference to the value of the cause of action, be cognizable by those officers respectively.(z)

Q. 239.—What suits cannot be instituted in *forma pauperis*?

A.—Suits not exceeding in value 10 Rupees, and suits for damages on account of slander, abusive language, assault or personal injury.(a) What suits cannot be instituted in *forma pauperis*.

Q. 240.—Are suits for the recovery of pecuniary penalties incurred by any breach of the Regulations admissible as Pauper Suits?

A.—Yes.(b)

Q. 241.—What is the first step a person desirous of suing as a Pauper, should adopt?

Procedure to be followed by applicant.

(v) Cl. 1, Sec. 7, Reg. VII, 1818.

(w) Sec. 3, Ibid.

8. U. Pro. 13th March 1823.

(x) Sec. 3, Reg. VII, 1818.

(y) Cl. 3, Sec. 12, Reg. VI, 1816.

C. O. 28th February 1855, No. 134 I.

(z) Cl. 2, Sec. 3, Reg. IV, 1825.

(a) Sec. 2, Ibid.

(b) Sec. 2, Ibid.

*A.*—He should apply to a Vakeel of the Court in which he desires to sue, to draw out a statement of the cause of action.(c)

Statement of  
cause of action,  
and Schedule.

Q. 242.—What should the statement of the cause of action set forth, and what should accompany it?

*A.*—It should contain a declaration of the nature, extent, and grounds of the demand, and the names of the parties intended to be sued. The applicant should sign the statement and the Vakeel should annex to it his opinion as to whether the suit is, or is not, sustainable,(d) and the grounds on which such opinion is formed.(e) If the Vakeel consider the case sustainable, the applicant should present a declaration in the form A in the Appendix to Regulation VII of 1818, together with a Schedule of the property possessed by him and the value thereof. The declaration and Schedule should be subscribed by the applicant, read in open Court, and sworn to by him, subject to the penalty for perjury, if the applicant swear falsely.(f)

Court may over-  
rule Vakeel's  
opinion.

Q.—243. Is the Court bound to admit, or disallow the applicant to sue in *formā pauperis*, according to the view taken of the case by his Vakeel?

*A.*—No. The Court, after considering the grounds of the Vakeel's opinion, may overrule the same, and may either admit the applicant to sue as a Pauper, or reject his application, as it may think proper.(g)

Procedure for  
admitting suit.

Q. 244.—What procedure should be followed for admitting a pauper suit?

*A.*—Immediately after the filing of the prescribed statement and schedule, the Court should cause a copy thereof to be affixed in some conspicuous place in the Court-room, and should issue a Notice to the party complained against, specifying the nature and amount of the demand, and the day fixed by the Court on which the applicant will be admitted to enter his suit as a Pauper, unless good cause be shown to the contrary. The day fixed should be sufficiently distant to allow of the production of evidence by the adverse party to invalidate the statement of the applicant.(h)

Who may ap-  
pear by Agent.

Q.—245. Are women and others of such rank and caste as are by the usage of the country exempted from appearing

(c) Cl. 2, Sec. 5, Reg. VII, 1818.

(d) Cl. 2, Sec. 5, Ibid.

(e) Sec. 4, Reg. IV, 1825.

(f) Cl. 4, Sec. 5, Reg. VII, 1818.

(g) Cl. 2 and 3, Sec. 5, Reg. IV, 1825.

(h) Cl. 5, Sec. 5, Reg. VII, 1818.

in Courts of Justice, bound to appear personally for the purpose of qualifying as paupers?

A.—No; they may appear by an accredited Agent.(i)

Q. 246.—Is it competent to the Pleader who drew out the statement of the cause of action, to object to the applicant's admission to the benefit of the Pauper law?

Applicant's Val-  
ue may object  
to admission of  
suit.

Q. 247.—On paper of what stamp-value should objections to an alleged plea of poverty be written?

Objections to  
be on stamp pa-  
per.

A.—On paper of the value prescribed for Answers in regular suits.(k)

Q. 248.—How are witnesses to establish objections to a plea of poverty to be cited, and made to appear?

Witnesses.

A.—Their names should be mentioned in the same paper on which the objections are made; and if they are not in attendance, summons for their appearance should be issued by the Court.(l)

Q. 249.—What points is the inquiry on the date fixed for the admission of the suit, to embrace?

Inquiry previ-  
ous to admission  
of suit.

A.—It should embrace specially the truth of the Schedule produced by the applicant, and generally, his admissibility to the benefit of the Pauper law ;(m) the opposite party being heard exclusively on the point of the extent of the property of the pauper applicant, and not at all upon the merits of the claim.(n)

Q. 250.—State the procedure, if no objections be made to the admission of the applicant to sue as a Pauper, or if the objections made be deemed insufficient?

Procedure if  
no objection be  
made, or if ob-  
jections be in-  
sufficient.

A.—The Court should take into consideration the amount and value of the property sworn to, and if of opinion that the applicant could not defray the probable costs of the suit without being reduced to great distress, the Court should admit him to institute his suit in *formā pauperis*.(o)

(i) Cl. 8, Sec. 5, Reg. VII, 1818.

(j) Cl. 6, Ibid.

(k) Cl. 7, Ibid.

(l) Cl. 7, Ibid.

(m) Cl. 9, Ibid.

(n) S. U. Pro. 16th September 1839.

(o) Cl. 10, Sec. 5, Reg. VII, 1818.

Appeal.

Q. 251.—<sup>(\*)</sup>Is any appeal allowed from the order of the Court admitting or rejecting the application of a party to sue as a Pauper?

A.—No.<sup>(p)</sup>

Security.

A. 252.—What security should the Court require from a person admitted to sue in *förmä pauperis*, and when should it be given?

A.—He should, before being permitted to file any Pleading, find two good and sufficient securities for his appearance whenever required by the Court. The security Bond should be in the Form B in the Appendix to Regulation VII of 1818.<sup>(q)</sup> The Sureties should not be required to make a deposit in money, but their personal security is only to be taken on the Nazir certifying to their possessing property sufficient to answer the judgment.<sup>(r)</sup>

Expenses of witnesses.

Q. 253.—In what cases are witnesses to be paid the expenses incurred by their appearing, and how is the expense to be charged?

A.—Witnesses unable themselves to bear the expense attendant on their appearing, are to be paid such reasonable sum as the Court may think proper, the amount being charged in the monthly Abstract of the Court.<sup>(s)</sup>

Stamps unnecessary.

Q. 254.—Is the copy of the Decree, or copies of Orders or proceedings furnished to a Pauper suitor, to be on stamped paper?

A.—No.<sup>(t)</sup>

Punishment of litigious paupers.

Q. 255.—How are litigious Paupers punishable?

A.—By fine not exceeding 200 Rupees, and imprisonment not exceeding six months. No sum is to be received in payment of the fine until the whole of the fees and costs of suit decreed against the Pauper shall have been paid.<sup>(u)</sup>

(p) Cl. 4, Sec. 5, Reg. IV, 1825.

(q) Cl. 2, Sec. 7, Reg. VII, 1818.

(r) Sec. 6, Reg. VII, 1818.

(s) Cl. 1, Sec. 7.

(t) C. O. 14th October 1839, No. 60.

(u) Sec. 8, Ibid.

**Q. 256.**—Can a Court assign one of its Vakeels to conduct a suit for a Pauper litigant ?

**A.**—Yes.(v)

**Q. 257.**—Are the provisions of the Pauper law applicable to regular suits, or to summary actions ?

**A.**—Only to regular suits.(w)

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(v) Sec. 12, Reg. VII, 1818.

| (w) Sec. 13, Ibid.

## SPECIAL SUITS.

### SECTION II.

#### SOLDIERS' SUITS.

Appointment  
of Attorney to  
conduct suit.

Q. 258.—How is a Native Officer or Soldier to proceed in instituting a suit before the Courts?

A.—If unable to obtain leave of absence for the purpose of personally conducting the suit, and if the claim has not originated in a loan or in a pecuniary transaction of a commercial nature, he may execute a Mookhtyarnamah or Power of Attorney on unstamped paper in the form No. 1 of the Appendix to Reg. VIII of 1817, authorizing any member of his family, or other person, to institute or carry on the Suit on his behalf.(x) The Mookhtyarnamah should be executed in the presence of and countersigned by, the Commanding Officer of the Corps or Detachment to which the Native Officer or Soldier may belong.(y)

Transmission  
of Power of At-  
torney to Court.  
Notice to At-  
torney.

Q. 259.—How is the Mookhtyarnamah executed by a Native Officer or Soldier, to be transmitted to the Court, and what should the Court do on its receipt?

A.—It should be transmitted to the Court by the Commanding Officer under cover of a public letter. Upon the receipt of the letter the Court should issue a Notice for procuring the attendance, either personally or by a constituted Vakeel, of the person nominated in the Mookhtyarnamah.(z)

Procedure if  
Attorney do not  
attend.

Q. 260.—How should the Court proceed if the Mookhtyar or Attorney refuse to attend in person or by Vakeel, or decline to act, or be prevented from any cause from acting, on behalf of the Native Officer or Soldier?

A.—The Court should cause the circumstance to be communicated to the Native Officer or Soldier by an Extract from its Proceedings, enclosed in an official letter addressed to the Commanding Officer of the Corps.(a)

(x) Cl. 1. Sec. 3, Reg. VIII, 1817.  
Cl. 6, Ibid.  
(y) Cl. 2 Ibid

(z) Cl. 3, Ibid.  
(a) Cl. 4, Ibid.

Q. 261.—If the Mookhtyar attend the Court, what procedure should be followed in the institution, trial and determination of the suit?

Institution and trial of suit.

A.—The same procedure should be followed as is prescribed in regard to regular Suits instituted by private individuals.(b)

Q. 262.—Must the Plaint in a suit instituted by a Native Officer or Soldier be on stamped paper?

Stamp.

A.—No, provided the suit has not originated in loans, or in pecuniary transactions of a commercial nature.(c)

Q. 263.—Who is to be charged with the value of the stamp from which the Plaintiff may be exempted?

A.—It should be charged in the Decree on behalf of Government to the party cast, or to the parties respectively in equitable proportions.(d)

Q. 264.—What is the penalty if a Native Officer or Soldier institute a suit in which he is not *bona fide* interested, with the view of enabling some other person to avail himself fraudulently of the privilege of exemption from stamp duty; and how is the penalty leviable?

Penalty for abuse of privilege of exemption from stamp.

A.—The penalty is fine not exceeding five times the value of the stamped paper which the party interested would have required for the institution of the suit. The fine should be levied in the manner prescribed for the execution of Decrees.(e)

Q. 265.—What proceedings should be adopted in order to obviate the trial *ex parte* of suits brought against Native Officers or Soldiers?

Notice to Defendant who is a Native Officer or Soldier.

A.—The Plaint should state that the Defendant is a Native Officer or Soldier, and should specify the particular Regiment or Corps he belongs to. In the event of the Plaintiff being unable to specify the Corps, the Court should ascertain the same, (f) and transmit a Notice in the usual form to the Defendant together with a copy of the Plaint on unstamped paper, enclosed in an official letter to the Commanding Officer, (g) who should cause the Notice to be served on the Defendant, and return it to the Court with the Defendant's written acknowledgment endorsed thereupon, together with the prescribed Mookhtyarnamah, if the De-

(b) Cl. 5, Sec. 3, Reg. VIII, 1817.

(c) Sec. 3, Act XV, 1845.

(d) Sec. 5, Ibid.

(e) Sec. 5, Ibid.

(f) Cl. 1, Sec. 4, Reg. VIII, 1817.

(g) Cl. 2, Ibid.



A.—No.(s)

What claims,  
not actionable  
under Reg. VIII,  
1817, and Act  
XV, 1845.

Q. 276.—To claims of what nature do the provisions of Regulation VIII of 1817 and Act XV of 1845 not apply?

A.—To claims originating in loans or pecuniary transactions of a commercial nature.(t)

IF-  
SOME ACTS. VIII,  
1817, applies, and  
to whom it does  
not.

Q. 277.—To what class of persons are the provisions of Regulations VIII of 1817 applicable, and to what class do they not apply?

A.—They are not applicable to persons discharged from the Service, or attached to provincial Battalions, or to local or irregular Corps, or to camp followers or non-combatant retainers of the Army, or to relatives of a Native Officer or Soldier. They apply strictly and exclusively to Native Officers or Soldiers of regular Corps, and on the actual strength of the Madras Army.(w)

Jurisdiction  
of Native Mil-  
itary Court of  
Requests,

Q. 278.—What suits against Native Officers and Soldiers are cognizable by a Native Military Court of Requests?

A.—Actions of debt and other personal actions not exceeding in value Rupees 200, provided the Defendant was amenable to the Native Articles of War, or resided within any station or Cantonment and carried on any trade or business in a Military Bazar when the cause of action arose and when the suit was instituted,(v) and provided the Plaintiff was, at the time the debt was contracted, a registered Military Bazarman of such Cantonment.(w)

Q. 279.—Are suits concerning a right to real property, or any dispute of caste, cognizable by a Native Military Court of Requests?

A.—No.(x)

Q. 280.—What legal enactment prescribes the constitution, powers and mode of procedure of Native Military Courts of Requests?

A.—Act XI of 1841.

of Police Offi-  
cer at Military  
Bazar Station.

Q. 281.—What Civil Suits has a Military Officer in charge of the Police at a Military Bazar station, jurisdiction over, and what class of persons ought the respective parties to be?

(s) Cl. 1, Sec. 10, Reg. VIII, 1817.

(t) Cl. 6, Sec. 8, Ibid.

Sec. 8, Act XV, 1845.

(u) Cl. 2, Sec. 10, Reg. VIII, 1817.

(v) Sec. 2, Act XI, 1841.

(w) Sec. 1, Act XII, 1842.

(x) Sec. 2, Act XI, 1841.

*A.*—He can adjudicate cases of debt not exceeding 20 Rupees, when referred to him by the Commanding Officer.(y) The Plaintiff should be a registered Military Bazar-man within the Cantonment, when the debt was contracted, and the Defendant should, at the time the cause of action arose, as well as at the time the suit was instituted, have been a person amenable to the Native Articles of War.(z)

*Q.* 282.—What Regulation prescribes the course of procedure in suits before Military Officers in charge of the Police at a Military Bazar Station?

*A.*—Regulation VII of 1832.

*Q.* 283.—What are the privileges enjoyed by Military and Naval Pensioners under the exsiting law?

Legal immunities of Pensioners.

*A.*—Their Pensions are not liable to attachment, by legal process, at the instance of a creditor for any demand, or in satisfaction of a Decree or order of any Court;(a) and all assignments, agreements, sales and securities of every kind made by a Pensioner in respect of his Pension, subsequent to the passing of Act VI of 1849, are invalid. (b)

(y) Cl. 3, Sec. 21, Reg. VII, 1832.

(z) Ibid.

Act XIV, 1855.

(a) Sec. 2, Act VI, 1849.

(b) Sec. 3, Ibid.

## SPECIAL SUITS.

### SECTION III.

#### SUITS AGAINST GOVERNMENT, OR PUBLIC OFFICERS.

Suits against  
Government.

Q. 284.—In what cases is the Government liable to be sued by private individuals?

A.—In cases where a person may consider himself aggrieved under any Regulation, by any proceeding of a Collector or other public Officer pursuant to a special order of the Government, or of the Board of Revenue, or other superior Authority. (c)

Q. 285.—State the procedure in suits instituted against the Government?

A.—The complainant should present a petition to the Zillah or the Subordinate Zillah Court stating wherein he considers himself injured under the Regulations, and praying that the Governor in Council will order the trial of the points or matters contested. The Court should forward the Petition to the Governor in Council, who, if he should not think it proper to afford the redress solicited, will direct the Court in which the cause may be cognizable, to proceed to the trial of it. If the trial be ordered, the Court should send a written notification of the order to the complainant, and the cause is to be considered as filed in the Court, from the date of the notification. The trial should then proceed under the same rules as are prescribed for the trial of suits between private individuals. The Officer who committed the act complained of, should carry on the suit under the directions of the Governor in Council, or the Board of Revenue, according to the immediate authority under which he may have acted, and should issue the necessary instructions to the Government Pleader in the Court in which the suit may be instituted. (d)

Q. 286.—How should the Officer entrusted with the management of a suit against Government proceed, if the Government be cast in it?

*A.*—He should forward a copy of the Decree and Proceedings of the Court, to the Governor in Council or to the Board of Revenue, according to the immediate authority under which he may have committed the act which originated the suit, with a letter stating any objection he may have to offer to the decision. The Governor in Council will order an appeal from the decision, to be preferred, or not, as he may deem proper.(e)

*Q.* 287.—How are the costs and damages awarded against Government in suits instituted against it, to be defrayed?

*A.*—They are to be defrayed from the Public Treasury.(f)

*Q.* 288.—What Courts are competent to entertain suits against Collectors for acts done in their official capacity in opposition to the Regulations?

Suits against Collectors.

*A.*—The Zillah and the Subordinate Zillah Courts.(g)

*Q.* 289.—How is a party to proceed in instituting a suit against a Collector or other public Officer for acts done in his official capacity in opposition to the Regulations?

*A.*—He should file a Petition of complaint as in a suit against a private individual.(h)

*Q.* 290.—What Notice should issue to a Collector appraising him of the institution of a suit against him?

*A.*—The same Notice should issue against him as against a Defendant who is a private individual.(i)

*Q.* 291.—How is a Collector to proceed on receiving a notice of a suit filed against him for his official acts?

*A.*—He should make a reference to the Board of Revenue or other superior authority under which he acted, either recommending that the Government grant the redress solicited, or requesting permission to defend the suit at the public expense.(j)

*Q.* 292.—What time is to be ordinarily allowed a public Officer to file his answer in a suit against him?

*A.*—Two months.(k)

*Q.* 293.—Is any legal assistance to be afforded a public Officer in defending a suit?

(e) Sec. 15, Reg. II, 1802.

(f) Ibid.

(g) Sec. 7, Reg. II, 1802.

(h) Cl. 1, Sec. 2, Reg. I, 1828.

(i) Cl. 1, Ibid.

(j) Cl. 2, Ibid.

(k) C. O. 12th February 1856.

*A.*—Yes, he is to be allowed the services of the Government Pleader.*(d)*

*Q.* 294.—What Vakalutnamah, or written authority, is a public Officer to give the Government Pleader to defend a suit on his behalf?

*A.*—None, save the order referred to in Section 37, Regulation XIV of 1816.*(m)*

*Q.* 295.—Under what rules is a suit against a public Officer to be tried?

*A.*—Under the rules prescribed for the trial of private suits.*(n)*

*Q.* 296.—Should the redress demanded by the Plaintiff be granted under orders from the Revenue Board or other superior authority, how is the Court to proceed?

*A.*—It should certify the amount of costs incurred by the Plaintiff and dismiss the suit on payment being made of such costs, on a Razeenamah being filed by the Plaintiff in the usual form.*(o)*

*Q.* 297.—In what case is the Plaintiff in a suit against a public Officer to forfeit his costs, notwithstanding that the redress he solicits is granted?

*A.*—In case he should fail to prove to the satisfaction of the Court, on being called upon so to do, that before instituting the suit he applied to the public Officer for the redress solicited in his Plaint, and that his application was refused.*(p)*

*Q.* 298.—Are District Moonsiffs competent to receive suits against Collectors for their official acts?

*A.*—No, it being ruled that it would be inconsistent with propriety, and with the principles and usages of the service that the acts of a superior Officer should be decided on by an inferior one.*(q)*

*Q.* 299.—To what Courts are Zillah Magistrates and their Assistants amenable by civil action for acts done in their official capacity in opposition to the Regulations?

Suits against  
Magistrates.

*(d)* Cl. 2, Sec. 2 Reg. I, 1823.

Sec. 37, Reg. XIV, 1816.

*(m)* C. O. 2nd May 1835. No. 12.

*(o)* Cl. 1, Sec. 4, Reg. I, 1823.

*(p)* Cl. 2, Ibid.

*(q)* C. O. 28th February 1827.

*A.*—The Zillah Courts.(r)

*Q.* 300.—What legal provisions are applicable to cases in which Magistrates when prosecuted may consider that the redress demanded should be granted, or that the suit should be defended at the public charge?

*A.*—The provisions of Regulation I of 1823.(s)

*Q.* 301.—How are persons deeming themselves aggrieved under Regulation I of 1805, by any act or order, done or issued by the Government, Board of Revenue, or any Officer of Government, to apply for redress to the Courts?

Suits against Government or its officers under Reg. I, 1805.

*A.*—In the mode prescribed by Section 15, Regulation II of 1802.(t)

*Q.* 302.—In what manner are parties deeming themselves aggrieved under Regulation VII of 1811, for any act or order, done or issued by the Government, Board of Revenue, or any Officer of Government, to proceed in applying to the Courts for redress?

—under Reg. VII, 1811.

*A.*—In the manner indicated in Section 15, Regulation II of 1802.(u)

*Q.* 303.—In what cases are the Courts to furnish the Government with a copy of their Decrees, and is such copy to be on stamped paper?

In Suits in which Government is a party Copy of Decree to be sent to Government.

*A.*—In all suits wherein Government may be a party, the Court which passed judgment should transmit a copy of the Decree to the Secretary to Government in the Judicial Department, for the information of the Governor in Council. Such copies of Decrees are not to be on stamped paper, but are to be authenticated by the official seal and the signature of the Judge who passed the same.(v)

*Q.* 304.—What Court is the Collector of Customs at Madras and his Subordinates amenable to, for acts done in their official capacity contrary to Act VI of 1844?

Suits against Collector of customs at Madras.

*A.*—To the Subordinate Zillah Court of Chingleput.(w)

*Q.* 305.—What Regulation lays down the procedure to be observed in the institution, trial and determination of suits against

(r) Sec. 43, Reg. IX, 1816.

Sec. 38, Act VII, 1843.

(s) C. O. 2nd September 1830.

(t) Sec. 21, Reg. I, 1805.  
vide p. 68.

(u) Sec. 17, Reg. VII, 1811.  
vide p. 68.

(v) Sec. 31, Reg. VII, 1809.

(w) Sec. 55, Reg. IX, 1808.

the Collector of Customs at Madras, or against the Subordinates, for the illegal confiscation of goods, or for the levying of double duty on goods?

A.—Regulation IX of 1803, Sections 56 @ 70.

Q. 306.—Is the Collector of Customs at Madras liable to prosecution for any act of his predecessor?

A.—No.(x)

Suits against  
Sudr Ameens,

Q. 307.—For what acts are Sudr Ameens liable to a civil action, and before what Court?

A.—They are liable to a civil action before the Zillah Court, for corruption, extortion, or any oppressive or unwarranted act of authority. Upon proof of the charge, the Judge should cause the Sudr Ameen to pay such damages and costs to the Plaintiff as may appear equitable.(y)

—against  
D. Moonsiffs.

Q. 308.—Before what Court is a District Moonsiff liable to a civil action, and for what acts?

A.—He is liable to a civil action in the Zillah Court for corruption, extortion or any oppressive or unwarranted act of authority. Upon proof of the charge, the Moonsiff is to be adjudged to pay such damages and costs to the Plaintiff as may seem equitable.(z)

Q. 309.—What preliminary enquiry should be made by a Zillah Judge previously to issuing process against a Sudr Ameen or a District Moonsiff charged with extortion or any oppressive or unwarranted act of authority?

A.—He should take evidence to the sustainability of the charge, and only on being satisfied that a *prima facie* case has been made out against the Sudr Ameen or the Moonsiff, process should issue.(a)

Q. 310.—Can a Sudr Ameen or a District Moonsiff be prosecuted for want of form, or for error in his proceedings or judgment?

Q. 311.—How is a Collector to proceed on receiving information of any acts of extortion, undue exaction, or other gross misconduct of a District Moonsiff?

(x) Sec. 68, Reg. IX, 1803.

(y) Sec. 12, Reg. VIII, 1816.

(z) Sec. 12, Reg. VIII, 1816.

Cl. 2, Sec. 3, Reg. VI, 1816.

A.—He should make such enquiry as the nature of the case may suggest, for the purpose of ascertaining whether any grounds exist for a more full and formal investigation of the charge; and, if he should find such grounds to exist, he should forward a statement of the case, together with a list of witnesses to the facts and circumstances thereof, to the Zillah Judge, for disposal by him.(c)

Q. 312.—What legal enactment provides for the appointment by the Government of a Commission to enquire into charges brought against public servants, not removable without the sanction of Government?

Enquiry by Commission into charges against public Servants.

A.—Act XXXVII of 1850.

Q. 313.—What legal protection is afforded Judicial Officers and their Subordinates by Act XVIII of 1850?

Legal protection of Judicial Officers and their subordinates.

A.—Under this Act, no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, can be sued in any of the Civil Courts for any act done, or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of. And no Officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, is liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the power issuing the same.

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(c) Sec. 6, Reg. II, 1821.





## **PART IV.**



**VILLAGE MOONSIFF.**

**ARBITRATION.**



## VILLAGE MOONSIFF.

Q. 314.—Who are appointed Village Moonsiffs, and who appoints them ? Appointment of Moonsiffs.

A.—Heads of Villages are appointed Moonsiffs within their respective villages.(*d*) The appointment of these Officers is vested in the Collector of the District.(*e*)

Q. 315.—What suits are entertainable by Village Moonsiffs, and what are beyond their cognizance ? Jurisdiction.

A.—They can entertain suits for sums of money, or other personal property of an amount or value not exceeding 10 Rupees.(*f*) But suits for real property, or for personal damages,(*g*) or suits in which they, or any of their immediate servants are personally interested,(*h*) or against persons not resident within their jurisdiction at the time of institution, are exempt from their cognizance.(*i*)

Q. 316.—Do the provisions of the Statute of Limitation apply to suits cognizable by Village Moonsiffs ? Law of Limitation.

A.—Yes.(*j*)

Q. 317.—What Regulation prescribes the course of procedure in suits before Village Moonsiffs ? Procedure.

A.—Regulation IV. of 1816.

Q. 318.—What powers of fine and imprisonment are vested in Village Moonsiffs, and in what cases are those powers to be enforced ? Powers of fine and imprisonment.

A.—They can impose a fine of eight annas on Witnesses who, duly summoned, may refuse to attend, or attending, refuse to answer,(*k*) and on parties, Vakeels or Witnesses, guilty of disrespect

(*d*) Sec. 2 & 3, Reg. IV. 1816.

(*e*) S. U. Dy. 8th Feb'y. 1831.

(*f*) Cl. 1, Sec. 5, Reg. IV, 1816,

(*g*) Sec. 6, Ibid.

(*h*) Sec. 7, Ibid.

(*i*) Sec. 8, Ibid.

(*j*) Cl. 2, Sec. 5, Ibid.

(*k*) Cl. 6, Sec. 15, Ibid.

Cl. 3, Sec. 16, Ibid.

to them.(l) In default of payment, the fine may be commuted for twelve hours' confinement in the Village Choultry.(m)

Amenability to  
higher Courts.

Q. 319.—Are Village Moonsiffs answerable for their conduct to the District Moonsiff, or to the Zillah, or the Subordinate Zillah Court ?

A.—They are not answerable to the District Moonsiff for their conduct in any case ;(n) and are amenable to the Zillah and the Subordinate Zillah Courts only on a charge of corruption, or of having exceeded the powers of fine or imprisonment legally vested in them.(o)

Execution of  
Decree.

Q. 320.—Are Village Moonsiffs competent to execute their own Decrees ?

A.—No. They must be executed by the District Moonsiff.(p)

Q. 321.—What points should a District Moonsiff satisfy himself of, before proceeding to execute a Decree of a Village Moonsiff ?

A.—He should satisfy himself of the legality of the Decree ; and should ascertain, by reference to the Monthly Reports forwarded to him by the Village Moonsiff, that the suit was not for real property, nor for personal damages, and that the interest was calculated according to the Regulations.(q)

Q. 322.—State the procedure in executing the Decree of a Village Moonsiff ?

A.—If the judgment debtor fail to pay the sum decreed within 30 days after the date on which copies of the Decree may have been furnished or tendered to the parties or their Vakeels, or within the period limited in the Decree, the Village Moonsiff should, on the written application of the judgment creditor, attach sufficient property of the debtor, and give notice to the District Moonsiff of such attachment and of the day fixed for the sale. The District Moonsiff will send a Peon to sell the property, in the presence of the Village Moonsiff, who

(l) Sec. 19, Reg IV, 1816.

(m) Sec. 25, Ibid.

(n) Cl. 3, Sec. 4, Ibid.

(p) C. O. 24th Dec. 1829.

(o) C. O. 1st Dec. 1817.

should however cause notice of the intended sale to be made, by beat of drum, 5 days previously to the sale. (r)

Q. 323.—If the proceeds of property sold in execution of a Village Moonsiff's Decree be more than sufficient to satisfy the Decree and pay all expenses, how is the surplus to be disposed of?

A.—It should be paid to the party cast, and his receipt for the same, attested by the Village Moonsiff and Curnum, be taken by the Peon and produced to the District Moonsiff, along with the receipt of the judgment creditor and the Village Moonsiff's certificate of the amount of batta and other expenses incurred. (s)

Q. 324.—Is the process prescribed for the execution of a Village Moonsiff's Decree to issue against the person, or the property, of the judgment debtor, or against both?

A.—Only against his property. (t)

Q. 325.—How is resistance to a sale of property in execution of a Village Moonsiff's Decree punishable?

A.—It is to be punished as a breach of the peace. (u)

Q. 326.—Explain the provisions of Section 23, Regulation IV of 1816?

A.—Section 23 requires that Village Moonsiffs should not allow, in their Decrees, a longer period than three months for their execution. The intention of the Legislature was to prevent the *Court* suspending the execution to the detriment of the Plaintiff beyond a certain period, and not to force the execution within that period, whether the Plaintiff wished it or not. The Decree may be executed any time within 12 years after being passed. (v)

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| <p>(r) Cl. 1, 2 and 5, Sec. 30, Reg. IV, 1816.</p> <p>(s) Cl. 4, Ibid.</p> <p>(t) C. O. 24th Dec. 1829, C.</p> | <p>(u) Cl. 6, Sec. 30, Reg. IV, 1816.</p> <p>(v) C. O. 24th Dec. 1829, C. S. U. Pro. 27th March 1831. 17th Nov. 1851.</p> |
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parties, to the decision of one arbitrator. The parties should themselves choose some one common friend or disinterested person to act as arbitrator. Should they not agree with respect to the person to be so appointed, the Court, with the concurrence of the parties, should appoint as arbitrator, the Proprietor of the estate in which the cause of action arose; the Farmer, if the estate be held in favor of Government; or the Cauzy of the Pergunnah; or the Tahsildar, or any other person of credit not interested in the matter in dispute. (g)

Q. 339.—Whenever the parties to a suit may consent to its decision by arbitration, what proceedings should take place prior to the case being submitted to the Arbitrators?

A.—The Court should cause the parties to execute Bonds binding themselves to abide by the award of the Arbitrators, and agreeing that it be made a decree of the Court. The Court should fix a reasonable time for the delivery of the award, the period so fixed being specified in the Bonds. (h)

Q. 340.—In what cases may an Umpire be nominated, and who is to appoint him?

A.—An Umpire may be nominated in cases referred to two or more Arbitrators, whether an odd or an even number. The parties may either nominate the Umpire themselves, or permit the Arbitrators to do so. (i)

Q. 341.—How are Arbitrators to proceed in investigating a suit referred to them?

A.—By hearing the pleadings of the parties, and examining their respective witnesses and documents. (j)

Q. 342.—Who should issue process for the attendance of the parties or witnesses before the Arbitrators?

A.—The Court which referred the suit to arbitration. (k)

Q. 343.—By whom is solemn affirmation to parties and witnesses to be administered?

A.—By the Court which referred the suit to arbitration. In cases in which an arbitration may be held at a considerable distance from the Court, the Court may grant Commissions to the Arbitrators to ad-

(g) Sec. 3, Reg. XXI, 1802.

(h) Sec. 5, Ibid.

(i) Sec. 5, Ibid.

Sec. 6, Reg. XXI, 1802.

) Sec. 6, Ibid.

minister solemn affirmation to witnesses whom they may be desirous of examining upon solemn affirmation. (*l*)

Q. 344.—What is the punishment if persons disobey process, make default, refuse to give testimony or sign depositions, or are guilty of contempt to the Arbitrators?

A.—Such persons are liable to the same penalties and punishments, by order made by the Arbitrators, as they would incur for the like offences in suits tried before the Court, but the Arbitrators should report the order with the reasons for making it, to the Court, and obtain its consent thereto. (*m*)

Q. 345.—In what cases may the time for delivering an award be extended?

A.—In cases where the Arbitrators or the Umpire may be unable to complete the award by the limited time, from want of necessary evidence or information, or other good and sufficient cause. (*n*)

Q. 346.—What should accompany the final award submitted by the Arbitrators to the Court, and what should the Court do on receiving it?

A.—The award should be accompanied with all the proceedings, depositions and exhibits in the cause. The Court, should on receiving the award, pass Decree conformably thereto, and the Decree should be carried into execution in the same manner as other Decrees of the Court. (*o*)

Q. 347.—Can an award of Arbitrators be set aside?

A.—Not unless gross corruption or partiality in the cause, on the part of the Arbitrators is proved, to the satisfaction of the Court, by the solemn affirmation of two credible witnesses. (*p*)

Q. 348.—What suits is a Village Moonsiff authorized to try as Arbitrator?

Village Moonsiff may arbitrate.

A.—He can try, as Arbitrator, suits for personal property, of a value not exceeding one hundred Rupees, provided both parties voluntarily agree in writing to refer them to his decision as Arbitrator, and subscribe bonds, attested by two or more credible witnesses, binding themselves to abide by the decision of the Moonsiff. (*q*)

Q. 349.—What suits can a District Moonsiff try as Arbitrator?

District Moonsiff may arbitrate.

(*l*) Sec. 6, Reg. XXI, 1802.

(*m*) Sec. 6, *Ibid*.

(*n*) Sec. 7, *Ibid*.

(*o*) Sec. 8, Reg. XXI, 1802.

(*p*) Sec. 9, *Ibid*.

(*q*) Sec. 27, Reg. IV, 1816.

A.—Suits voluntarily referred to him by both parties, whether for real or personal property of the value or amount for which regular suits are cognizable by him. In such cases, the parties should execute in his presence a Bond agreeing to abide by his decision, attested by two credible witnesses. (r)

Q. 350.—By what rules are Village and District Moonsiffs to be guided in trying suits, as Arbitrators ?

A.—By the same rules as are prescribed for their guidance in the trial of regular suits cognizable by them. (s)

PUNCHAYETS.

Q. 351. Name the different Punchayets authorized by the Regulations, and state the Regulation under which each is to be assembled ?

A.—Village Punchayets, under Regulation V of 1816 :

District Punchayets, under Regulation VII of 1816 :

Revenue Punchayets, under Regulation XII of 1816 : and

Military Punchayets, under Regulation VII of 1832.

Village Punchayet.

Q. 352.—By whom are Village Punchayets to be convened, and what suits are they competent to decide ?

A.—They are to be convened by Village Moonsiffs for the determination of suits for sums of money or other personal property without limitation as to amount, (t) in the following cases ;

1st. Where the Plaintiff and Defendant agree that the matter in issue shall be decided, without appeal, by a Village Punchayet, and prefer a request in writing to that effect to the Moonsiff of the village in which the parties reside, or of any other village :

2d. Where one party to a suit prefers such a request in writing, and the other, being an inhabitant of the same village, on being summoned by the Moonsiff, signifies his assent in writing. (u)

Q. 353. What suits are Village Punchayets prohibited from trying ?

A.—Suits for personal damages. (v)

Q. 354. Of how many members should a Village Punchayet consist ?

A.—It should always consist of an odd number, never less than 5, nor more than 11. (w)

(r) Cl. 1 & 3, Sec. 57, Reg. VI, 1816.

(s) Sec. 28, Reg. IV, 1816.

Cl. 4, Sec. 57, Reg. VI, 1816.

(t) Cl. 1, Sec. 2, Reg. V, 1816.

(u) Cl. 2, Sec. 2, Ibid.

(v) Sec. 12, Ibid.

(w) Cl. I, Sec. 3, Ibid.

Q. 355.—What is the penalty if an inhabitant of a village refuse to serve on a Panchayet, and how is it to be levied?

A.—He is liable to be fined by the Village Moonsiff in a sum not exceeding five Rupees, levied, if necessary, under the rules prescribed for the execution of Decrees of Village Moonsiffs. (x)

Q. 356.—After a Village Panchayet has been formed, how should it commence its proceedings?

A.—By requiring from the parties an agreement in writing to abide by its decision. The Village Moonsiff and Curnum should attest the agreement. (y)

Q. 357.—What Regulation lays down the procedure to be followed by Village Panchayets in suits tried by them?

A.—Regulation V. of 1816.

Q. 358.—How are Decrees of Village Panchayets to be executed, and by whom?

A.—Where the amount adjudged may not exceed 100 Rupees they are to be executed by the Village Moonsiff in the mode prescribed for the execution of *his* Decrees. (z) Where the amount may exceed 100 but not exceed 200 Rupees, the District Moonsiff is to execute the Decree. (a) In all other cases the decisions of Village Panchayets are to be carried into execution by the Subordinate Judge or Principal Sudr Ameen under the rules laid down for the enforcement of their own Decrees. (b) Subordinate Judges or Principal Sudr Ameen are authorized to employ District Moonsiffs in executing Decisions of Village Panchayets. (c)

Q. 359.—Before what Courts are members of Village Panchayets liable to be prosecuted for corruption, and what is the punishment on conviction?

A.—They may be so prosecuted in the Court of the Subordinate Judge or Principal Sudr Ameen, by either party in the suit, tried by them and, upon proof of the charge, should be adjudged to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit. (d) The Court should further fine the party by whom, or for whom, the corruption may have been practised. (e)

(x) Cl. 2, Sec. 3, Reg. V, 1816.

(y) Cl. 2, Sec. 4, Ibid.

(z) Cl. 1, Sec. 16, Ibid.

(a) Cl. 2, Ibid.

(b) Cl. 3, Sec. 16, Reg. V, 1816.

(c) Cl. 2, Sec. 17, Act. VII, 1848.

(d) Cl. 1, Sec. 18, Reg. V, 1816.

(e) Cl. 2, Sec. 18, Ibid.

Q. 360.—What award should be made if a charge of corruption against a member of a Village Punchayet be not satisfactorily proved?

A.—Damages should be awarded to such Member, and a fine levied from the complainant not exceeding the value of the thing alleged to have been corruptly received.(f)

District Punchayet.

Q. 361.—By whom are District Punchayets to be convened, and what suits are they competent to decide?

A.—They are to be convened by the District Moonsiff; and can decide suits for real or personal property of any amount or value, in the two following cases; (g)

1st. Where the Plaintiff and Defendant agree that the matter in issue shall be decided without appeal, by a District Punchayet, and prefer a request in writing to that effect to the District Moonsiff, whether he be the Moonsiff of the District in which the parties reside, or of any other District:

2nd. Where one party to a suit prefers such a request in writing, and the other, being an inhabitant of the same District, or being summoned by the Moonsiff, signifies his assent in writing.(h)

Q. 362.—What suits are District Moonsiffs prohibited from trying?

A.—Suits for personal damages, unless referred to them by the District Moonsiff by order of the Zillah Judge. (i)

Q. 363.—Of how many members should a District Punchayet consist, and where should it sit?

A.—It should always consist of an odd number, never less than 5 nor more than 11. It should sit at the station where the District Moonsiff's Court is held.(j)

Q. 264.—Of whom is a District Punchayet to be composed, and what is the penalty for refusing to serve on it?

A.—It is to be composed of the most respectable inhabitants of the District who shall be called upon to serve in rotation. Any inhabitant refusing to serve, is liable to be fined by the District Moonsiff in a sum not exceeding 10 Rupees, to be levied if necessary under the rule prescribed for the execution of Decrees.(k)

(f) Cl. 3, Sec. 18, Reg. V, 1816.

(g) Cl. 1, Sec. 2, Reg. VII, 1816.

(h) Cl. 2, Sec. 2, Ibid.

(i) Sec. 12, Reg. VII, 1816.

(j) Cl. 1, Sec. 3, Ibid.

(k) Cl. 2, Sec. 3, Ibid.

**Q. 365.**—After a District Punchayet has been formed, how is it to commence its proceedings ?

**A.**—By requiring from the parties an agreement in writing to abide by its decision. The District Moonsiff and any two respectable inhabitants should witness the agreement.(*l*)

**Q. 366.**—What Regulation prescribes the course of procedure in suits tried by District Punchayet ?

**A.**—Regulation VII of 1816.

**Q. 367.**—By whom are Decisions of District Punchayets to be executed ?

**A.**—By the District Moonsiff, in cases where the suit may be for Lakaraj land, of an annual produce not exceeding 20 Rupees ; and for Malgoozary land, of an annual produce not exceeding 200 Rupees ; and for other property, real or personal, not exceeding in value 200 Rupees.(*m*) In all other cases the decisions of District Punchayets are to be executed by the Zillah Judge in the mode prescribed for the enforcement of his own Decrees.(*n*) The Zillah Judge may refer to the Subordinate Judge, Principal Sudr Ameen, or a District Moonsiff, an application for execution of a District Punchayet's Decree.(*o*)

**Q. 368.**—Before what Court is a member of a District Punchayet liable to be prosecuted for corruption, and what is the punishment on conviction ?

**A.**—He is liable to be prosecuted in the Zillah Court by either party in the suit tried by the Punchayet, and upon proof of the charge, should be adjudged to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit.(*p*) The Court should further fine the party by whom, or for whom, the corruption may have been practised, provided he assented to such corruption in a sum equal to the value of the thing, or the sum of money, corruptly received.(*q*)

**Q. 369.**—What award should be made, if a charge of corruption against a member of a District Punchayet be not established ?

(*l*) Cl. 2, Sec. 4, Reg. VII, 1816.

(*m*) Cl. 1, Sec. 16, *Ibid*.

(*n*) Cl. 2, Sec. 16, *Ibid*.

(*o*) Sec. 20, Act. VII, 1843.

Cl. 2, Sec. 17, Reg. VII, 1816.

Sec. 61, Reg. VI, 1816.

Cl. 1, Sec. 18, Reg. VII, 1816.

(*q*) Cl. 2, Sec. 18, *Ibid*.

A.—Damages should be awarded to such Member, and a fine levied from the complainant not exceeding the value of the thing or the sum of money alleged to have been corruptly received.(r)

Revenue Panchayet.

Q. 370.—What claims are Revenue Panchayets competent to enquire into, and decide?

A.—Claims to lands or crops in Districts permanently settled or otherwise, the validity of which claims may depend on the determination of an uncertain and disputed boundary or landmark; and disputes respecting the occupying, cultivating and irrigating of land, which may arise between the proprietors, or renters, and their ryots, or between ryot and ryot.(s)

Q. 371.—When is a cause to be referred to a Revenue Panchayet, and by whom?

A.—If, on a claim to land, or crops, or water, being preferred to the Collector, the Defendant should deny the truth of the Plaint, the Collector should enquire of the parties whether they mutually consent to have the cause investigated and decided by a Village Panchayet: and upon their so agreeing, the Collector should forward the Plaint, with an order to the Moonsiff of the Village selected by the parties to assemble a Panchayet.(t) Should either of the parties object to the reference of the cause to a Village Panchayet, and desire in writing that it may be referred to a District Panchayet, the Collector should transmit the Plaint to the Moonsiff of the District in which the land may be situated, with an order to assemble a Panchayet within 15 days from the receipt of the order.(u)

Q. 372.—Should neither of the parties object to the reference of the suit to a Revenue Panchayet, how is the Collector to proceed?

A.—The suit should be dismissed, and the parties left at liberty to seek redress from the Zillah Court or any other competent tribunal.(v)

Q. 373.—By what rules are Revenue Panchayets to be guided in the trial and determination of causes referred to them?

A.—If the Panchayet be assembled by a Village Moonsiff, by the rules prescribed in Regulation V of 1816; and if a

(r) Cl. 8, Sec. 18, Reg. VII, 1816.

(s) Cl. 1, Sec. 4, Reg. XII, 1816.

Sec. 18, Reg V, 1832.

(t) Cl. 6, Sec. 5, Reg. XII, 1816.

(u) Cl. 7, Sec. 5, Ibid.

(v) Cl. 8, Sec. 5, Ibid.

District Punchayet, by the provisions of Regulation VII. of 1816.(w)  
On occasions of doubt and difficulty a District Punchayet may  
apply to the Zillah Judge for instructions.(x)

Q. 374.—Can Decrees of Revenue Punchayets be carried into execution immediately on being passed?

A. No. They must first be confirmed by the Collector.(y)

Q. 375.—Can a Decree of a Revenue Punchayet be set aside?

A. Not unless gross partiality on the part of the Punchayet be proved to the satisfaction of the Collector.(z)

Q. 376.—What disputes are Collectors authorized to refer direct to a Punchayet, without the intervention of the Village or District Moonsiff?

A. Disputes respecting arrears of rent or revenue, rates of assessment or division in kind, as well as all questions of the right of occupancy or possession, of lands or crops, brought to the Collector under Regulation V of 1822, may, provided both parties agree to that mode of settlement, be referred by the Collector to a District or Village Punchayet for decision.(a) In such cases the Collector is authorized to exercise the powers vested in Village and District Moonsiffs under Regulations V and VII of

Q. 377.—When suits respecting disputed lands and crops may be referred to a Punchayet, can one of the parties be put in possession before a decision is passed?

A. Yes. The Collector may, on the application of either party, put one party in possession and maintain him in it till a decision is passed.(c)

Q. 378.—How are Military Punchayets to be convened, and what cases are they competent to decide?

Military Punchayet.

A. They are to be assembled by the written summons of the Officer in immediate charge of the Military Police at a Military Bazar Station, for the decision of suits for personal property, without limitation as to amount, provided the Defendant was a Native Officer or Soldier, or other person amenable to the Articles of War, at the time the cause of action arose, as well as

(w) Cl. 1, Sec. 6, Reg. XII. 1816.

(x) C. O. 28th Feb, 1828.

(y) Cl. 4, Sec. 6, Reg. XII, 1816.

(z) Cl. 4, Sec. 6, Ibid.

Cl. 1, Sec. 9, Ibid.

(a) Cl. 1, Sec. 15, Reg. V, 1822.

(b) Cl. 2, Sec. 15, Ibid.

(c) Sec. 17, Ibid.



at the institution of the suit, and provided both parties agreed in writing, to such mode of decision.(d)

Q. 379.—Of how many Members should a Military Panchayet consist, and by whom are they to be nominated?

A. It should consist of five Members, each party nominating two, and the Military Police Officer, one, who should be unobjected to by the two parties.(e)

Q. 380.—What procedure should be followed by Military Panchayets in the trial and determination of cases referred to them?

A. They should proceed in the same manner as District Panchayets convened under Regulation VII of 1816.(f)

Razeenamah  
admissible.

Q. 381.—Is a Panchayet competent to admit a Razeenamah?

A. Yes.(g)

Majority decide.

Q. 382.—In cases where the minority of the members of a Panchayet decline to sign an award, what is sufficient to give it legal validity?

A. The signatures of the majority. But in such cases the minority should be allowed to record their reasons for declining to sign the award.(h)

Death of Mem-  
ber dissolves  
Panchayet.

Q. 383.—What effect will the death of a Member have on the Panchayet?

A. It dissolves the Panchayet, and the Moochilka executed by the parties becomes null and void. The parties may either apply for a new Panchayet, or prefer their claims to any other competent tribunal. If they apply for a new Panchayet, the surviving members of the old one will be eligible to sit upon it, and (in respect of witnesses) the new Panchayet may avail itself of any depositions in writing, before the old one, which may be duly authenticated.(i)

Law of limi-  
tation applies.

Q. 384.—Does the Statute of Limitation apply to suits before Village and District Panchayets?

A. Yes.(j)

(d) Sec. 24, Reg. VII, 1832.

Cl. 1, Sec. 26, Ibid.

(e) Sec. 25, Ibid.

(f) Cl. 1, Sec. 26, Ibid.

(g) C. O. 28th Feby, 1828.

(h) Act VIII, 1840.

(i) C. O. 27th March, 1828.

(j) Cl. 3, Sec. 2, Reg. V. 1816.

Cl. 3, Sec. 2, Reg. VII, 1816.

## APPENDIX.

### I.

#### RULES FOR THE EXAMINATION OF CANDIDATES FOR THE OFFICES OF DISTRICT MOONSIFF AND PLEADER IN THE COURT OF SUDR UDALUT AND THE SEVERAL COURTS SUBORDINATE THERETO.

1. The following rules are promulgated with the sanction of Government in supersession of all previous rules for the examination of Candidates for the Offices of District Moonsiff and Pleader in the Sudr Court, or in those of the Zillah Judges, Subordinate Judges, Principal Sudr Ameens and Sudr Ameens. .

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

2. Examinations of Candidates for the Office of Moonsiff specially are to be discontinued. The examinations to be hereafter held shall be of Candidates for the Office of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen, or Sudr Ameen. The applications preferred by Candidates shall state that they wish to be examined for the Office of Pleader, and the diplomas granted to those who may pass shall specify that they are eligible for the Office of Pleader in the Courts abovementioned. Only the holders of such diplomas, and those who have already passed for Moonsiffs, but are still unemployed as such, shall be eligible to the Office of Moonsiff.

3. The examination of Candidates for the Office of Pleader in the Sudr Court, or in the Courts of the Zillah Judges, Subordinate Judges, Principal Sudr Ameens or Sudr Ameens, will be held yearly in the month of February at Chicacole, Masulipatam, Nellore, Bellary, Chingleput, Combaconum, Coimbatore, Calicut, Mangalore and Madura.\* The examination will be conducted by the Civil Judge, Magistrate, or Joint Magistrate, and the Subordinate Judge or Principal Sudr Ameen of the Station at which the examination is held.

\* See Appendix V. p. 100.

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

4. Candidates are required to send in their applications in English, in the form A., to the Judge of the Zillah within which they reside, who shall grant a Certificate in the form B., after making such enquiries, as he may deem proper, to ascertain that the applicant is a person of respectable connections, good character and suitable attainments. If, however, the enquiries made on these points prove unsatisfactory, or if the applicant be unable to produce credentials to his respectability, past conduct, and general qualification, the Judge shall reject the application.

5. The Chief Magistrate of Madras is authorized to grant Certificates to parties who reside in that city.

6. The Principal of the Madras College and the Head Masters of the Government Provincial Schools are also authorized to grant Certificates to *bond fide* students of the Institutions under their charge: but all such Certificates granted by the Head Masters of the Government Provincial Schools are to be countersigned by the Judge of the Zillah in which the School, or College, may be situated, after that Officer shall have made the enquiries required in ordinary cases.

7. The applications are, in all cases, to be presented, at least, two months before the date fixed for the examination, and shall specify the name of the station at which the Candidate may desire to be examined, provided that no examination shall be held at any station other than those abovementioned.

8. Every Certificate granted by a Zillah Judge, or by the Head Master of a Government Provincial School, countersigned by a Zillah Judge, shall be transmitted by the latter Officer to the Court of Sudr Udalut, who, if they be aware of no objection, shall forward it to the Judge of the station at which the Candidate has applied to be examined, with their opinion expressed in the following terms:

"The Sudr Udalut, having inspected the Certificate, are aware of no objection to the examination of the applicant."

(Signed) \_\_\_\_\_

Register.

9. No Certificates are to be granted, but to persons who may be inhabitants of, or employed within, the jurisdiction of the Officers granting them.

Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.

10. Persons under the age of 21 are not eligible to examination.

11. The date on which the application is presented is to be noted thereon, immediately under the application, and at the head of the tabular form.

12. When a person, who has received a Certificate, presents himself for examination, the Committee, if they shall be aware of objections to his examination on the score of character, shall refuse to proceed with his examination, and shall declare their objection in writing on the face of the Certificate, and transmit it to the Sudr Udalut for such orders, or for such further enquiry, as the Sudr Udalut may think proper.

13. If the Judge of a District have good and sufficient grounds to believe, from any proceeding, or other information officially before him that any Moonsiff or Pleader under his control, is not sufficiently qualified to discharge, in a proper manner, the duties of his situation, he may require such Moonsiff or Pleader to present himself for examination before the Divisional Committee when next held; and any Moonsiff or Pleader, who, being so required, may refuse to submit to examination, or, being examined, may fail to obtain a diploma, shall forfeit his appointment, and shall not be re-appointed to a Moonsiffship or Pledership until he obtain a diploma of fitness.

14. Judges, who may require Moonsiffs or Pleaders to present themselves before the Divisional Committee for examination in pursuance of the foregoing rule, shall intimate the same to the Committee at least twenty-five days before the date fixed for the examination.

15. Twenty days previous to the examination, the Judges of Chicacole, Masulipatam, Nellore, Bellary, Chingleput, Coimbatore, Combaconum, Calicut, Mangalore and Madura, will report to the Court of Sudr Udalut the number of applicants whose names are registered for examination.

16. The examination shall be partly *visâ voce*, and partly written answers to prepared questions.

17. The written questions will be framed by the Court of Sudr Udalut, from the Regulations and Rules of practice for the guidance of the Courts of Civil Justice, and will be for-

Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.

warded by them to the Examination Committees, prior to the date fixed for the examination.

18. The questions are to be answered by the Candidates, without reference to Books or other sources of information, in the presence of two Members of the Examination Committee, one of them being the Judge. The several Members of the Committee, however, shall examine the replies, and report on the eligibility of the Candidates. Candidates will be at liberty to give their replies in whatever language they please; but it will be the duty of the Committee to satisfy themselves that every Candidate, who may be considered qualified in other respects for the situation of Pleader, possesses also a competent knowledge of one of the vernacular languages of the country.

19. After the Candidates shall have delivered their written replies to the questions, the record of a suit, which has been decided on its merits, shall be read by a Gomastah, *seriatim*, the final decree excepted, to the several Candidates, who shall then be required to record, in any language they may prefer, their opinion on the points at issue between the parties, and the manner in which the suit ought to be decided agreeably to the Regulations and the law of the parties. The opinions thus recorded, shall be examined by the whole of the Committee, to enable them to judge of the capacity and intelligence of the Candidates.

20. The oral examination shall be conducted by a full Meeting of the Examining Committee, who shall examine each Candidate separately, by questions relating to the Regulations and Acts, and to the constitution, extent of jurisdiction, powers and course of procedure, of the Civil Courts.

21. At the conclusion of the examination, the Committee shall grant diplomas of qualifications in the Form C. to such of the persons examined, as they may consider deserving, and, at the same time, forward duly certified lists of such Candidates, to the Sudr Udalut.

22. No Member of any Committee shall vote regarding any Candidate, who may be in any way related to, or connected with, him.

23. Candidates, who may be rejected, shall be entitled to appear at subsequent examinations, provided, however, that such Candidates shall renew their Certificates from the Zillah Judge,

and that they shall be admitted to examination by the Sudr Udalut previously.

Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.

24. Persons who have passed the examination shall be eligible *for appointment*, either as Moonsiff, or as Pleader in the Sudr Court, or in the Courts of the Zillah Judges, Principal Sudr Ameens, and Sudr Ameens; but in the selection of persons for the Office of Moonsiff, preference shall be given to those Candidates who have been in practice as Pleaders, or have been employed in other situations in the Judicial or Revenue Department of the Public Service, and can produce testimonials of having performed their duties in an able and upright manner.

25. Lists of passed Candidates, eligible to the Office of Moonsiff or Pleader, will be sent by the Court of Sudr Udalut in the Form D., after each examination, to the several Zillah Judges. The appointment of passed Candidates to the Office of Pleader will remain with the Zillah Judges, and the holder of a diploma, if not open to objection on the ground of general conduct and character, such objection being open to appeal to the Sudr Udalut, is entitled to an appointment in any Zillah on application, without reference to the number of Pleaders at the time attached to the Courts in it. Sunnuds are to be granted to them in the Form E.

26. On the occurrence of a vacancy, either temporary or permanent, in the Office of Moonsiff, the Zillah Judge will nominate any individual named in any of the lists for the approval of the Sudr Court.

27. The examination of Candidates for the Office of Pleader in the District Moonsiffs' Courts shall be conducted as heretofore by the Zillah Judge.

28. The holder of a Diploma to plead in one of the Superior Courts, shall be eligible for the Office of Pleader in a District Moonsiff's Court, on application.

29. Whenever it may be found impossible to obtain the services of the holder of a Diploma as a Pleader in any particular Court, the Sudr Udalut shall cause selection to be made of a fitting person for the Office, and appoint him temporarily to the same, until such time as he may obtain the requisite diploma, or a duly qualified person may be available.

(Signed) GEORGE ELLIS,

*Register.*

6th July, 1855.

**Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.**

The application of \_\_\_\_\_, inhabitant of \_\_\_\_\_, Whereas I am desirous of becoming a Candidate for the situation of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen or Sudr Ameen, I request that, after making the necessary inquiries, you will grant me a Certificate prescribed by the rules for the examination of Candidates.

Application received on the \_\_\_\_\_

(Signed) \_\_\_\_\_

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                               |   |      |   |                     |   |                                                    |   |                                                                                                      |   |                                                            |   |                                                                                     |   |                                                                                                                                         |   |                                                                                                                                                                                                                               |    |  |
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| 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Name of the applicant and that of his Father. | 2 | Age. | 3 | Religion and Caste. | 4 | Family residence, viz. Town or Village and Zillah. | 5 | Particulars relative to the family and connections of the applicant which may seem worthy of notice. | 6 | Statement of past employment in the service of Government. | 7 | Statement of landed or other property belonging to the Nominee, and where situated. | 8 | Statement of whether the applicant is a debtor or creditor of other parties, and if so, the place, residence of his debtor or creditor. | 9 | Name of Government College or School, if any, in which the applicant was educated, number of years for which he was so educated, & statement of honors or prizes, if any, obtained by him in the last year of such education. | 10 |  |
| <p style="text-align: center;">Certificate of the Judge.</p> <p style="text-align: center;">B.</p> <p style="text-align: right;">I do hereby certify that I have satisfied myself that _____ is a man fully fitted to discharge the duties of this office as a man fully fitted, by respectability, good character and general education, to fill the office of Pleader, either in the Sudr Court, or in the Court of the Zillah Judge, Subordinate Judge, Principal Sudr Ameen or Sudr Ameen. And that he is entitled to the privilege of examination as to his qualifications for the office.</p> <p style="text-align: right;">_____<br/>Judge.</p> |                                               |   |      |   |                     |   |                                                    |   |                                                                                                      |   |                                                            |   |                                                                                     |   |                                                                                                                                         |   |                                                                                                                                                                                                                               |    |  |

Zillah \_\_\_\_\_  
The \_\_\_\_\_

## C.

We hereby certify that \_\_\_\_\_ was examined at the yearly examination held at \_\_\_\_\_ in the month of \_\_\_\_\_ 18\_\_\_\_ and that we consider him duly qualified, from his knowledge of the Native languages, and of the laws and rules of practice for the guidance of the Courts of Civil Justice, to hold the office of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen or Sudr Ameen.

(Signatures of the Members.)

| Name of Candidate. | Name of his Father. | Age. | Place of Residence. |
|--------------------|---------------------|------|---------------------|
|                    |                     |      |                     |

Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.



**D.**

**List of persons who have received Diplomas, certifying that they have passed an examination and have been declared competent to serve as Pleaders in the Court of Sudr Udalut or in the several Courts subordinate thereto.**

| Name. | Name of Father. | Residence. | Acquirements. | Date and place of examination and No. in the List. | Certificate granted by what Committee or Judge, and under what date. | REMARKS. |
|-------|-----------------|------------|---------------|----------------------------------------------------|----------------------------------------------------------------------|----------|
|       |                 |            |               |                                                    |                                                                      |          |

Register.

**H.**

In conformity with the provisions of Regulation XIV of 1816 and Act I of 1846, you \_\_\_\_\_ are hereby appointed to the office of Pleader in the Zillah Court of \_\_\_\_\_. You will not be liable to be removed from your situation so long as you may conduct yourself with propriety, and discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or may hereafter be in force.

*Judge.*

## II.

THE Judges of the Court of Sudr Udalut hereby notify, with reference to the rules lately published by them for the examination of Candidates for the Offices of District Moonsiffs and Pleaders in the Court of Sudr Udalut, and the several Courts Subordinate thereto; that only holders of such diplomas as are therein described, and those who have already passed as Mooffy Sudr Ameens, but are still unemployed as such, shall be eligible to the office of Mooffy Sudr Ameen.

Rules for Examination of Candidates for Offices of District Moonsiff and Pleader.

(Signed) GEORGE ELIAS,

16th July, 1855.

*Register.*

## III.

THE Court of Sudr Udalut, with the sanction of Government, hereby intimate with reference to Rule 17 of the Rules lately published for the examination of Candidates for the offices of District Moonsiffs and Pleaders, that Candidates will also be examined in the Hindoo and Mahomedan Law of Inheritance, Gift, Will, Sale and Mortgage.

The Court of Sudr Udalut further intimate that, previous to entering upon the examination prescribed by Rule 17, any European or East Indian Candidate will be subjected to a preliminary examination in one of the following Vernacular languages,—Tamil, Telooگو, Malayalum or Canarese.

The examination in question is to be held the day previous to the one fixed for the examination prescribed by Rule 17; and no Candidate by whom this first trial is not satisfactorily passed is to be allowed to compete further on that occasion.

1st. The Candidate will be required to read without difficulty and to explain correctly, in English, papers written by different persons in a plain running hand. These papers to consist of extracts copied from books or official Records.

2nd. An English paper to be translated into the Vernacular, without assistance. The translations to be substantially correct in meaning, and intelligible to a Native.

3rd. To dictate at sight an English Petition into the Vernacular. The translation to be written down exactly as dictated. The paper to be intelligible and substantially correct

des for Examination of candidates for Offices of District Moonsiff and Pleader.

4th. To be tested in conversation with two or three Natives, in such manner and to such extent as shall suffice to satisfy the Committee of the Candidate's capability of making himself understood by Natives of different classes, and of understanding them.

(Signed) GEORGE ELLIS,

5th September, 1855.

*Register.*

#### IV.

THE Judges of the Court of Sudr and Foujdaree Udalut, with the sanction of Government, hereby notify that no Native Pleader, holding a Diploma under the Rules dated 6th July, 1855, will, in future, be permitted by them to practise in the said Court, who does not possess a sufficient acquaintance with the English language to enable him to read and understand the Orders and proceedings of Court, which, in accordance with the provisions of Clause 4, Section XV, Regulation XV. of 1816, are recorded in that language.

(Signed) GEORGE ELLIS,

28th September, 1855.

*Register.*

#### V.

THE Court of Sudr Udalut, with the sanction of the Right Honorable the Governor in Council, resolve to notify that, in modification of the Rules for the examination of Candidates for the offices of District Moonsiff and Pleader, an examination of Candidates for the Offices in question for the current year will be held at the following stations in the month of June next, viz :

Bellary.  
Trichinopoly.  
Mangalore.  
Rajahmundry.

All Candidates residing at Bellary, Cuddapah, and Kurnool, should appear for examination before the Divisional Committee at Bellary; those residing at Trichinopoly, Combaconum, Madura, Salem, Coimbatore, and Tinnevely, before the Committee at Trichinopoly; those residing at Chicacole, Vizagapatam, Ganjam, Rajahmundry, Masulipatam and Guntoor, before the Committee at Rajahmundry; and those residing in Malabar and Canara, before the Committee at Mangalore.

An examination will also, at the same time, be held before this Court, of such of the Candidates as are residents of Chittoor, Chingleput, Cuddalore, Nellore and Madras.

(Signed) GEORGE ELLIS,

16th January, 1857.

*Register.*

## **ERRATA.**

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- p. 12 at foot, for (*h*) Cl. 1, Sec. 23, Reg. XXIII, 1816 ; read (*h*) Cl. 1, Sec. 23, Reg. XIII,
- n. 13 do. for (*p*) Act XXXV, 1836 ; read (*p*) Act XXXI, 1836.
- n. 16 do. for (*f*) C. S. U. 9th May 1837 ; read S. U. Dy. 9th May 1837.  
for (*g*) S. S. U. 9th May 1837 ; read S. U. Dy. 9th May 1837